Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters



and Decisions

of the United States Court of Appeals for the Federal Circuit and the United States Court of International Trade

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THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

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U.S. Customs Service

Treasury Decisions

19 CFR Parts 111, 171, and 178

(T.D. 86–161)

CUSTOMS REGULATIONS AMENDMENTS RELATING TO CUSTOMS BROKERS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to implement the statutory changes made by the Trade and Tariff Act of 1984 relating to the regulation of customs brokers. Among these changes were the creation of a single license for each broker and separate permits to operate in each Customs district, a listing of specific grounds for suspension or revocation of a license or permit, creation of a monetary penalty and specific procedures to be followed when an action is initiated to suspend or revoke a license or assess a monetary penalty. In addition, the regulations are being amended to incorporate recommendations of a Customs Headquarters Task Force on broker licensing and regulation.

EFFECTIVE DATE: September 25, 1986.

FOR FURTHER INFORMATION CONTACT: Steven I. Pinter or Fred Burns O'Brien, Entry, Licensing and Restricted Merchandise Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–5765).

SUPPLEMENTARY INFORMATION:

BACKGROUND

A customs broker ("broker") is a person who is licensed by the Customs Service ("Customs") to transact customs business on behalf of importers and other persons. Under § 641, Tariff Act of 1930, as amended (19 U.S.C. 1641), the Secretary of the Treasury may prescribe rules and regulations governing the licensing as brokers of citizens of the U.S. of good moral character, and of corporations, associations, and partnerships. Rules and regulations also may be prescribed as necessary to protect importers and the revenue of the

U.S., to include requiring the keeping of books, accounts, and records by brokers, and the inspection of these and related papers, documents, and correspondence by any duly accredited agent of the U.S. Part 111, Customs Regulations (19 CFR Part 111), contains the regulations prescribed by the Secretary relating to the licensing of brokers and their duties and responsibilities.

A Customs Headquarters Task Force on broker licensing and regulations (Task Force) was established to make a comprehensive study of the laws and regulations administered by Customs which relate to brokers and to make recommendations for regulatory amendments.

Based upon the recommendations of the Task Force for regulations changes, on April 7, 1983, Customs published a notice in the Federal Register (48 FR 15154), proposing amendments to 19 CFR Part 111.

Subsequently, by § 212 of Pub. L. 98–573, the Trade and Tariff Act of 1984 (the Act), substantial revisions were made to 19 U.S.C. 1641, relating to brokers. Among the changes were the creation of a single license for each broker and separate permits to operate in each Customs district, a listing of specific grounds for suspension or revocation of a license or permit, creation of a monetary penalty, and specific procedures to be followed when an action is initiated to suspend or revoke a license or assess a monetary penalty.

Because of these legislative changes, the earlier proposal was redrafted and published in a Federal Register notice on August 7, 1985 (50 FR 31871).

Discussion of Comments

Fourteen comments were received in response to the notice, some quite detailed, touching on many aspects of the proposal. Many commenters offered suggestions of an editorial nature to clarify the existing and the proposed regulations. Some suggestions were adopted and others were found to be unnecessary.

Editorial Comments

The following editorial comments were not adopted.

(1) A suggestion that § 111.16(b)(4) be eliminated because it duplicates § 111.53.

We believe it is useful to spell out clearly that a willful misstatement of pertinent facts in the application for a broker's license is sufficient cause to justify the denial of a license. Section 111.53 concerns grounds for suspension or revocation of a license, not grounds for refusal to issue one.

(2) A suggestion that § 111.5(a) not be amended because a strict reading would preclude a broker with a West Coast permit from representing his importer before a National Import Specialist in New York or at Headquarters because he does not transact customs business in those districts.

The commenter is incorrectly interpreting § 111.5(a). A broker is not permitted to represent a client at a local level in a district where a permit has not been granted. However, a broker may represent a client at a national level at either Headquarters or with a National Import Specialist.

(3) A suggestion that the title of § 111.19(d) be changed to "Requirement for Permit" and that a subheading "Waiver of District Responsible Supervision" be inserted. No specific reasons were given for this suggestion.

We believe that no changes in the headings are necessary.

(4) A suggestion that the words "(including several related corporations)" be inserted in § 111.23(e)(1) before the words "in more than one region" because corporate brokers may choose to transact business in different districts under different names or may operate other offices in subsidiary or affiliate relationships.

We believe that the section is clear without the addition of the parenthetical explanation. Brokers who have been granted permits to do business in more than one region will personally have the permits. It is clear from the language that it makes no difference whether the broker with the permit to do business transacts the business under different names, as long as he has a permit.

The following editorial comments were adopted.

(1) In § 111.11(b)(2), the words "been granted" was changed to "applied for" to more clearly reflect the correct sequence of events.

(2) In § 111.11(c)(3), the words "where it has been granted" was changed to "where it has applied for" to more clearly reflect the correct sequence of events.

(3) In § 111.19(d), in the second sentence, the words "on or after" was changed to "on and after" to clarify that starting October 31, 1987, an applicant for a broker's permit must employ, in each district for which a permit is granted at least one licensed individual to exercise responsible supervision and control.

(4) In § 111.19(d), the word "matter" in the second to last sentence was changed to "request for waiver".

(5) In § 111.23(b), the words "may record on microfilm any records other than powers of attorney" was changed to "may maintain on microfilm or similar medium, in lieu of an original, any records other than powers of attorney", to clarify that original powers of attorney must be maintained, but there is no restriction against also putting copies of powers of attorney on microfilm or similar medium.

(6) Section 111.23(d), was revised to clarify that any document may be recorded in an alternative method in addition to maintenance of the original documents.

Other minor, non-substantive editorial changes have also been made to these regulations.

GENERAL CONCERNS

One of the major areas of concern indicated in the comments relates to the term "customs business". Some commenters were concerned that brokers be regulated by Customs only regarding their "customs business".

Customs traditional mission is to assess and collect duties on imported merchandise; to prevent fraud and smuggling; and to control carriers, persons, and articles entering and departing the U.S. In carrying out its mission, Customs must, to a certain extent, regulate the business of brokers. This includes requiring the retention of records relating to their adherance to the laws and regulations administered and enforced by Customs. Customs will not go beyond the scope of its mission.

One commenter stated that special permits should be issued to individuals who prove themselves capable of transacting customs business related to drawback. Customs cannot adopt this suggestion. As defined in 19 U.S.C. 1641 (a)(2), "customs business" includes drawback transactions and, according to 19 U.S.C. 1641(b), no person may conduct customs business unless that person holds a broker's license.

Another requested clarification that 19 U.S.C. 1641, as amended by the Act, does not require an attorney to obtain a broker's license to represent a client in an administrative proceeding before Customs.

Customs assures the commenter that it would not consider it a violation of the Act if an attorney represents a client before Customs without possessing a broker's license.

Two commenters stated that existing § 111.44, dealing with limits of liability for brokers' business activities, should be deleted as the broker-client relationship is not within Customs regulatory objective. As no change was proposed in this section, the comment is beyond the scope of this rulemaking and is not being adopted.

Another general concern was that brokers be protected from any arbitrary and/or capricious actions taken by Customs officials. This concern was indicated in suggested changes in various provisions concerning giving brokers reasonable notice in writing regarding Customs actions.

We are also concerned that adequate notice be given to all parties in their Customs dealings. Accordingly, specific language regarding notice has been included in §§ 111.23(e)(2)(v), 111.23(e)(3), and 111.45.

REQUIREMENTS FOR OBTAINING LICENSE OR PERMIT

It was suggested by one commenter that a basic requirement for an individual obtaining a broker's license be that the applicant demonstrate a minimum of 2 years experience with Customs procedures in the U.S. Customs rejects this suggestion as an unnecessary

restraint. Knowledge of Customs procedures is demonstrated by the applicant obtaining a passing grade on the broker examination.

A commenter stated that § 111.19 should not require, as a condition for the granting of a permit, that the district director be satisfied that the person intends to transact business within the district.

Customs disagrees. As amended by § 212 of the Act, 19 U.S.C. 1641(c) clearly provides that permits will be granted only in districts in which the broker conducts customs business.

Another stated that the issuance of permits should be pro forma and that the primary permit to accompany the license was automatically to be included with the license.

A permit is required in the district in which a license is issued. However, Customs agrees that issuance of a permit will be pro forma (1) if the applicant has a valid license which is not subject to an on-going revocation or suspension action, (2) the applicant has a place of business in the district for which the permit is sought, and (3) if a licensed broker is employed as a permanent employee in that district subject to the conditions in § 111.28 relating to responsible supervision and control. A permit for the district through which the license application was submitted will be issued concurrently with the license if these conditions are met.

It was also suggested that when a broker applies for a permit in an additional district, unnecessary delay could be eliminated if Headquarters would contact other district directors where brokers have permits to conduct business, rather than having the district directors contact each other.

Customs disagrees. Direct communication between district directors will facilitate and expedite the approval process, whereas centralized processing would create a bottleneck. Moreover, the issuance of a permit depends upon the applicant's holding a valid license, having a place of business within the district, and having made satisfactory arrangements to have responsible supervision of the work performed by his employees in the district. Inasmuch as the district director is in a better position to verify that these conditions exist than Headquarters, the suggested change is not adopted.

Another suggestion concerning § 111.19 was that when a corporation goes into another district located in another state and applies for a permit to do business in that district, it should be required to first apply to the state or local government for the right to use the business name in that state. This would prevent the possibility of more than one broker using the same business name, thus confusing the public.

Customs agrees. A sentence is added to the end of § 111.19(b) stating, "When a broker applies for a permit in an additional district, he must provide the district director with a document which reserves the business name with the state or local government, in order to avoid the use of the same or a confusingly similar name by two brokers".

DUTIES AND RESPONSIBILITIES OF BROKERS

Responsible Supervision and Control

Some concern was indicated regarding the term "responsible supervision and control" as explained in § 111.11(d). One commenter stated that the level of supervision and control that Customs is requiring—that of "substantially the same quality of service in handling customs transactions that the licensed broker is required to provide"—is unreasonable. If Congress had expected such a level of performance, it would have required all employees to be licensed brokers. This commenter also stated that the regulations should provide that an employee who is competent and experienced in the transaction of customs business shall be deemed to not require the same degree of supervision and control as an inexperienced employee.

It is Customs view that a broker must ensure the competence of services provided by his employees. The broker must supervise the work of his employees to the extent necessary to ensure that the service provided by those employees in particular aspects of customs business, if not exactly the same quality that is required of a broker, is "substantially" the same. We believe that this is necessary to ensure that competent service is provided to the public in transactions with Customs. Determinations of whether employees are adequately supervised will vary depending upon the particular circumstances in each instance. Accordingly, it would be impracticable to list all possible circumstances in the regulations.

Another commenter requested clarification as to whether the responsibility of supervision and control lies solely with the licensed broker who is an officer of a corporation.

Customs believes the regulations are clear that while customs transactions may be performed by a qualified employee of an association or corporation who need not be a licensed individual, that employee must be under the responsible supervision and control of a licensed individual, who may or may not be an officer of the corporation.

EMPLOYEE REPORTS

Many comments concerned § 111.28(b), which requires that a broker submit, in writing to each district director, a list of the names of persons currently employed in the district and other pertinent information concerning the employees.

Information on a broker's employees is used by Customs for law enforcement purposes. With this information, Customs is able to ascertain if any employees have criminal records which may affect their suitability for employment in the brokerage business. Customs believes that demanding this information from brokers is reasonable because the employing broker is in the best position to know

when employees are hired or terminated. Demanding the information from the employees would not be feasible as Customs regulates the brokers, not the employees.

One commenter stated that it is not fair for Customs to require immediate notification in the event of the death or substantial disability of an individual broker.

Customs believes that in the event of the death or substantial disability of a broker, a member of the brokerage firm must notify Customs immediately in order to enable Customs to verify compliance with the requirement of replacing the deceased or disabled licensee within the requisite period of time. For this reason, notification must be provided immediately or as soon as practicable after the death or disability of the broker.

In a related matter, § 111.28(b)(3) has been changed to increase the time a broker is allowed to submit the name of a terminated employee from 10 to 30 days.

RECORDKEEPING

The duties and responsibilities of brokers regarding maintenance of records of transactions was another area that generated comments. It was suggested that some of the items on the form provided for in § 111.22(d) do not fall within the definition of "custom business" and that the vast majority of brokers are exempted from maintaining the form anyway.

While the normal regulatory audits performed by Customs are limited in scope, Customs can, when a complaint against a broker is received, expand the scope of the audit to all charges relating to customs business. The suggestion to eliminate this section of the regulations is rejected. Customs ability to respond to complaints would be impaired if records were not maintained in the prescribed manner or some other manner approved by Customs.

While Customs is aware that many brokers are currently exempt from maintaining the prescribed form because of the adequacy of their recordkeeping systems, § 111.22 must be retained for those brokers who do not have an adequate system. Customs agrees with the comments that some of the item numbers on the form do not fall within the definition of "customs business". Accordingly, when the form is used, columns 7–15 may be left blank.

It was suggested by a few commenters that centralized storage be provided for other than accounting records. One commenter specifically would like centralized storage of microfilmed entry records.

Customs agrees that this suggestion has merit. We are looking into the possibility of allowing centralized storage for all broker's records. However, certain administrative and enforcement concerns must be resolved before such an option can be approved. Guidelines, which would ensure that Customs could examine records as necessary to carry out its enforcement and revenue-collection responsibilities, would have to be developed before the option could be offered.

If, after consulting with affected parties, acceptable guidelines are developed, a notice will be published in the Federal Register proposing the option.

Two commenters stated that proposed § 111.23(a) would require brokers to retain powers of attorney for 5 years after the date of revocation. Yet some powers of attorney are never revoked. Accordingly, it was recommended that the wording be changed to indicate that powers of attorney and letters of revocation should be retained for 5 years after either the date of revocation or the date the client ceases to be an "active client" as defined in § 111.29(b)(2)(ii). Customs has adopted language to this effect.

One commenter took issue with the requirement in § 111.23(e)(2)(i) that in the written request for authorization to maintain centralized financial records of customs business, the address indicated at which the broker desires to maintain the records must be within a district where the broker has been granted a permit.

Customs believes that this requirement is reasonable. By requiring brokers to maintain records within a district where a broker has a permit, Customs will have better control over entries in that district.

According to proposed § 111.23(f), when an audit indicates that a broker to whom an exemption has been granted is not keeping records as required, the regional commissioner who has granted the exemption shall notify the broker. The broker has 30 days to respond and if a satisfactory response is not given, the regional commissioner can withdraw the exemption. Two commenters suggested that in such a situation a broker should be able to appeal to the Commissioner and the exemption should remain in effect pending the Commissioner's decision.

Customs does not agree. The regional commissioner has the authority in these matters and there is no reason to have an appeal to the Commissioner. If an exemption is withdrawn, the broker can still operate; he simply must maintain records in the prescribed format. The loss of an exemption is not the loss of a right, but the loss of a privilege.

A few commenters stated that existing §§ 111.25 and 111.27 should be amended to state that records maintained by brokers should be made available to Customs regulatory auditors or special agents "upon reasonable notice."

Customs sees no reason to include that language because Part 162, Customs Regulations (19 CFR Part 162), which concerns recordkeeping, inspection, search, and seizure, states that reasonable notice will be given by Customs officers when they are conducting an examination. Sections 162.1a through 162.1i are specifically cited in § 111.25.

ACCOUNTING FOR FUNDS FROM CLIENT

One commenter stated that Customs should more specifically state in proposed § 111.29 the kind of document a broker is required to give a client to account for funds received from the client. The commenter is concerned that Customs may require more than the normal accounting documents such as invoices or credit memos and that the requirement of a written statement other than an accepted accounting document would be extremely onerous.

Customs agrees that normal accounting documents are sufficient. However, we believe the section, as written, emcompasses these documents, and need not be changed.

NOTIFICATION OF CHANGES IN BROKERAGE FIRM

One commenter stated that in proposed § 111.30(b), only the district directors of the districts to which the changes relate should have to be notified when there is a change in the broker's organization. We agree and wording to that effect has been added. The same commenter believes that it is onerous to require notification of the changes to be made immediately. We disagree. Immediate notification is now required and Customs has found this to be workable.

CANCELLATION, SUSPENSION OR REVOCATION OF LICENSE

It was suggested by one commenter that when a broker receives a statement of charges against him as provided for in proposed § 111.58, a maximum time period of suspension should be specified. Customs disagrees. As charges are merely being stated and the broker has the right to respond to them, it would be premature to decide on the length of a suspension until all the facts are submitted and evaluated, and a determination made.

One commenter suggested that the word "defense" be changed to "response" in the first and last sentences of existing § 111.60 to be consistent with the statutory language. We agree. As well as making that change, the word "defense" is changed to "response" in the second sentence of existing § 111.58.

Proposed § 111.74, concerning the notification to a broker of suspension or revocation or monetary penalty, generated several comments. A few commenters stated that the Secretary of the Treasury's determination should be based solely on the record and that a notice of suspension, revocation, or monetary penalty should not be published in the Federal Register and CUSTOMS BULLETIN if an appeal is filed and the action is not final yet.

Customs agrees and § 111.74 has been amended to reflect these changes.

One commenter asked that standards be set forth for determining the maximum penalties for certain types of violations by brokers based upon degree of culpability and seriousness of the violation.

Customs has drafted such guidelines. They are attached to this document and will be incorporated as Appendix C of Part 171, Customs Regulations.

Customs disagrees with the commenter who believes an administrative review should be provided for a determination that a monetary penalty of $1,000 or less should be assessed. Owing to the cost of such a review to both parties, it has been concluded that penalties of $1,000 or less should not be subject to a supplemental petition for relief.

Regarding the suggestions by commenters to increase from 30 to 60 days the time within which a broker must respond to a notice of possible disciplinary proceedings or penalties in §§ 111.59, 111.92, and 171.12, Customs believes that 30 days is generally adequate. However, district directors will be given explicit authority to grant extensions for good cause.

A suggestion to delete the parenthetical expression concerning infractions that will form the basis for an action to suspend or revoke a broker's license or permit, in proposed § 111.53(b)(3), is rejected because 19 U.S.C. 1641(d)(1) states that these infractions are not subject to a monetary penalty.

FEES

After publication of the proposal, Part 3 of the consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272, passed on April 7, 1986), established that an annual user fee of $125 is to be assessed for each broker's permit held by an individual, partnership, association or corporate broker. The legislative history of this law provides that this fee will help to defray the costs of regulating the brokerage industry. Accordingly, by T.D. 86–109, published in the Federal Register on June 11, 1986 (51 FR 21152), a new § 111.96, Customs Regulations, was provided to set forth the fee.

In this document we are setting forth the fees for the issuance of licenses and accompanying permits and the fee for filing a status report. The purpose of these fees is to defray the costs of issuing licenses and permits and of processing the receipt and storage of the triennial reports. Pursuant to 19 U.S.C. 1641(h), the Secretary of Treasury may prescribe reasonable fees and charges for these functions. While originally Customs planned to review these fees annually and revise them as necessary, it has been decided to charge a one-time fee of $300 for licenses, a $100 fee for the issuance of each permit, and a fee of $100 for filing the triennial reports. Customs will assess no further fees at this time. Of course, if current costs escalate, Customs will increase the fee and public notice of the increase will be published in the Federal Register and CUSTOMS BULLETIN. However, it is not anticipated that these fees will be revised annually. These fees are set forth in § 111.96.

EXECUTIVE ORDER 12291

These amendments do not constitute a "major rule" as defined by § 1(b) of E. O. 12291. Accordingly, a regulatory impact analysis is not required.

REGULATORY FLEXIBILITY ACT

It is certified that the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), are not applicable to these amendments because the rule will not have a significant economic impact on a substantial number of small entities. As most of the changes reflect § 212 of the Trade and Tariff Act of 1984 (Pub. L. 98–573), and Part 3 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272), any economic impact would be attributable to the actions of Congress and not Customs.

PAPERWORK REDUCTION ACT

The regulation is subject to the Paperwork Reduction Act of 1980, Pub. L. 96–511. Several commenters claimed that the collection of information requirements were too broad to be within the scope of this Act. Most of these comments are responded to in the discussion of comments in this document. Regarding the 5-year record retention period, pursuant to § 508, Tariff Act of 1930, as amended (19 U.S.C. 1508), Customs has authority to require maintenance of records of any owner, importer, consignee or agent thereof who imports any merchandise for up to 5 years from the date of entry of the merchandise. Due to their complexity, many cases extend to that length of time. Therefore, Customs believes it is in the best interest of the Government and the importing public to require maintenance of records for that time span.

As a result of our analysis of the issues and the changes made in this document, the regulation meets the requirements of this Act. Accordingly, applicable sections of the regulation have been cleared by the Office of Management and Budget and assigned Control Number 1515–0100.

DRAFTING INFORMATION

The principal author of this document was Harold M. Singer, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

LIST OF SUBJECTS

19 CFR Part 111

Administrative practice and procedure, Brokers, Customs duties and inspection, Imports.

19 CFR Part 171

Administrative practice and procedure, Law Enforcement, Penalties, Seizuers and Forfeitures.

19 CFR Part 178

Reporting and recordkeeping requirements, Paperwork requirements, Collections of information.

AMENDMENTS TO THE REGULATIONS

Parts 111, 171, and 178, Customs Regulations (19 CFR Parts 111, 171, 178), are amended as set forth below.

PART 111—CUSTOMS BROKERS

1. The authority citation for Part 111, Customs Regulations (19 CFR Part 111), continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (Gen. Hdnte. 11), 1624, 1641.

§ 111.3 also issued under 19 U.S.C. 1484.

§ 111.96 also issued under 31 U.S.C. 9701.

2. The heading for Part 111 and § 111.0 are revised to read as follows:

PART 111—CUSTOMS BROKERS

§ 111.0 Scope.

This part sets forth regulations providing for the licensing of, and granting of permits to, persons desiring to transact customs business as customs brokers, the qualifications required of applicants, and the procedures for applying for licenses and permits. This part also prescribes the duties and responsibilities of brokers, the grounds and procedures for disciplining brokers, including the assessment of monetary penalties, and the revocation or suspension of licenses.

3. Section 111.1 is amended by redesignating paragraphs (c), (d), (e), (f), and (g) as paragraphs (d), (e), (f), (g) and (h), respectively, revising the heading and text of paragraph (b) and redesignated paragraphs (d), (f), and adding a new paragraph (c), to read as follows:

§ 111.1 Definitions.

* * * * * * *

(b) *Customs Broker.* "Customs broker" means a person who is licensed under this part to transact customs business on behalf of others.

(c) *Customs business.* "Customs business" means those activities involving transactions with Customs concerning the entry and admissibility of merchandise, its classification and valuation, the payment of duties, taxes, or other charges assessed or collected by Customs upon merchandise by reason of its importation, or the refund, rebate, or drawback thereof.

(d) *Broker.* "Broker" means "customs broker".

* * * * * * *

(f) *Records.* "Records" means those documents identified in § 162.1a of this chapter and kept as provided in § 162.1b of this chapter.

* * * * * * *

4. The heading and text of § 111.2 are revised to read as follows:

§ 111.2 License and district permit required.

A person shall obtain the license provided for in this part in order to transact the business of a broker. A separate permit is required for each Customs district in which a licensee conducts customs business.

5. Part 111 is amended by removing § 111.5, redesignating existing § 111.4 as § 111.5 and adding a new § 111.4 to read as follows:

§ 111.4 Transacting customs business without a license.

Any person who intentionally transacts customs business, other than as provided in § 111.3, without holding a valid broker's license, shall be liable for a monetary penalty for each such transaction as well as for each violation of the requirements of 19 U.S.C. 1641. The penalty shall be assessed in accordance with Subpart E of this chapter.

6. Paragraph (a) of redesignated § 111.5 is amended by removing the words "is not licensed" and inserting, in their place, "has not been granted a permit".

7. The heading to Subpart B is amended by adding the words "Or Permit" after the word "License".

8. Section 111.11(a)(4) is amended by removing the words "regulations, and procedures" and inserting, in their place, "regulations and procedures, bookkeeping, accounting, and all other appropriate matters".

9. Section 111.11(b) and (c) is revised and a new paragraph (d) is added, to read as follows:

§ 111.11 Basic requirements.

* * * * * * *

(b) *Partnership.* A partnership must:

(1) Have at least one member of the partnership who is a licensed broker, and

(2) Establish that it will have an office in the customs district where it has applied for a permit in which its customs transactions will be performed by the licensed member of the partnership, or an employee under the responsible supervision and control of the licensed member.

(c) *Association or corporation.* An association or corporation must:

(1) Be empowered under its articles of association or articles of incorporation to transact customs brokerage business;

(2) Have at least one officer who is a licensed broker; and

(3) Establish that it will maintain an office in the Customs district in which it has applied for a permit. Further, customs transactions in that office must be performed by a licensed officer or an employee under the responsible supervision and control of the licensed officer.

(d) *Responsible supervision and control.* The term "responsible supervision and control" means that degree of supervision and control necessary to ensure that the employee provides substantially the same quality of service in handling customs transactions that the licensed broker is required to provide. While the determination of what is necessary to maintain responsible supervision and control will vary depending upon the circumstances in each instance, factors which Customs will consider include, but are not limited to: the frequency of visits to officers of the licensee by the licensed broker(s); the training required of employees; the issuance of written instructions and guidelines to the employees; the volume and type of business of the licensee; the reject rate for the various customs transactions; the maintenance of current editions of the Customs Regulations, Tariff Schedules of the United States, and Customs issuances; the availability of the licensed broker(s) for consultation with the employee(s), when necessary; the frequency of audits and reviews by the licensed broker(s) of the customs transactions handled by the employee(s); and any circumstance which indicates whether a licensed broker of the firm has a real interest in the firm's operations.

10. Section 111.12(a) is amended by removing the subtitle *"(1) Application"* and the entire paragraph subtitled *"(2) Fee"*. The section is also amended by removing the words "paragraph (a)(2) of this section" in the third sentence and inserting, in their place, "§ 111.96 of this part". Also, § 111.12(a) is amended by adding at the end of the section the following:

"Applications may be accepted within 30 days before the scheduled examination in the district director's discretion".

11. Section 111.13(a) is amended by removing the words "regulations, and procedures" and inserting, in their place, "regulations and procedures, bookkeeping, accounting, and all other appropriate matters".

12. Section 111.13(c) is revised to read as follows:

§ 111.13 Examination of applicant for individual license.

* * * * * * *

(c) *Special examination.* When a partnership, association, or corporation loses the licensed member or officer and its license will lapse under the provisions of 19 U.S.C. 1641(b)(5) before the next scheduled examination, the Commissioner may authorize a special examination for an applicant who will serve as the licensed member or officer. He may also authorize a special examination for one who will be authorized to continue the business of an individual broker.

A special examination may also be authorized when a licensed brokerage firm loses its qualifying individual exercising responsible supervision and control over a district office and that office's permit will lapse before the next scheduled examination. Application and a statement of the reasons for the necessity of a special examination shall be filed with the district director in accordance with § 111.12.

13. Sections 111.13(d) and (e) are amended by removing the last sentence of each paragraph.

14. The heading and text of § 111.19 is revised to read as follows:

§ 111.19 Permits.

(a) *General.* Each person granted a broker's license under this part shall be concurrently issued a permit for the district through which the application was submitted, without the payment of the fee required by § 111.96 if it is shown to the satisfaction of the district director that the person intends to transact customs business within the district through which the broker's license application is submitted and the person otherwise complies with the requirements of this part.

(b) *Submission of application for permits for additional districts.* A licensed person who intends to conduct customs business in an additional Customs district, or a licensed person who was not concurrently granted a permit with the broker's license under paragraph (a) of this section, shall submit an application for each additional Customs district to the district director of that district on Customs Form 3124. If the information set forth by the applicant on the Customs Form 3124 submitted pursuant to § 111.12 is current, a copy of that application may be submitted inplace of a new Customs Form 3124. The Customs Form 3124 shall be modified to indicate that it is an application for a permit. The applicant shall comply with the requirements set forth in § 111.12(a). Each application for a permit shall identify the broker's license number and date of issuance. The broker shall list in its application all districts for which a permit has been granted. When a broker applies for a permit in an additional district, he must provide the district director with a document which reserves the business name with the state or local government, in order to avoid the use of the same or a confusingly similar name by two brokers.

(c) *Fee.* Each application for a permit shall be accompanied by the fees set forth in § 111.96.

(d) *Responsible supervision and control.* The applicant shall have a place of business within the district for which the application is filed, or shall have made firm arrangement satisfactory to the district director to establish such a place of business. The applicant shall exercise responsible supervision and control over the office as defined by § 111.11(d). On and after October 31, 1987, other than as provided below, the applicant shall employ in each district for which a permit is granted at least one individual licensed under

this subpart to exercise reponsible supervision and control over the customs business conducted in the district. If the applicant can demonstrate to the satisfaction of the Commissioner that he regularly employs, in the region in which the district is located, at least one individual who is licensed, and that adequate procedures exist for the person employed in that region to exercise responsible supervision and control, as defined by § 111.11(d), over the customs business conducted in the district, the Commissioner may waive the requirement for a licensed broker in that district. A request for a waiver, supported by information on the volume and type of customs business conducted, or planned to be conducted, and evidence demonstrating that the applicant is able to exericise responsible supervision and control, shall be sent to the district director of the district in which the waiver is sought. The district director shall review the request for a waiver and make recommendations which will be sent to the Director, Entry Procedures and Penalties Division, Customs Headquarters, through the appropriate regional commsissioner. The regional commissioner will review the district's recommendations and make appropriate recommendations before referring the matter to Customs Headquarters for a decision.

(e) *Action on application.* Upon receipt of the application for a permit, the district director shall immediately notify the district director in each other district in which the applicant has a permit and request comments as to the applicant's compliance with the duties and responsibilities of a broker in the other district. The district director in the other district shall timely submit his comments and recommendation to the district director making the request. The district director who received the application shall make a decision on it after considering all of the facts and circumstances. An application shall be approved unless action is pending in another district to suspend or revoke the applicant's license.

(f) *Investigation.* The district director may require an investigation to be conducted if additional facts are deemed necessary before making a decision upon the application.

15. The second sentence of § 111.21 is amended by removing the word "papers" both times it appears and inserting, in its place, "records".

16. The introductory paragraph of § 111.22(b) and § 111.22(b)(2) are amended by removing the words "books and" each time they are used.

17. Further, § 111.22 is amended by adding a new paragraph (e) to read as follows:

§ 111.22 Additional record of transactions.

* * * * * * *

(e) *Authorization.* The regional commssioner for the region in which a broker has been granted an exemption to maintain records of financial transactions on a centralized system basis, as set forth

in § 111.23(e), is responsible for providing an exemption or withdrawal of exemption under paragraphs (b) and (c) of this section.

18. The heading to § 111.23, paragraph (a), and the introductory text to paragraph (b) are revised to read as follows:

§ 111.23 Retention of records.

a. *Place and period of retention. (1) Place.* The records, as defined in § 111.1(f), and required by §§ 111.21 and 111.22 to be kept by a broker, shall be retained within the Customs district to which they relate, unless an exemption has been granted for centralized accounting records under paragraph (e) of this section.

(2) *Period.* The records described in paragraph (a)(1) of this section, other than powers of attorney, shall be retained for at least 5 years after the date of entry. Powers of attorney shall be retained until revoked, and revoked powers of attorney and letters of revocation shall be retained for 5 years after either the date of revocation or the date the client ceases to be an "active client" as defined in § 111.29(b)(2)(ii). When merchandise is withdrawn from a bonded warehouse, copies of papers relating to the withdrawal shall be retained for 5 years from the date of withdrawal fo the last merchandise withdrawn under the entry.

(b) *Microfilming of records.* A broker, with the approval of the district director for the district in which he has been granted a permit and the records are located, may maintain on microfilm or similar medium, in lieu of an original, any records other than powers of attorney required to be retained under the provisions of paragraph (a) of this section, at any time after the entry to which these records pertain has been liquidated, upon the following conditions:

* * * * * * *

19. Section 111.23(d) is revised to read as follows:

§ 111.23 Retention of records.

* * * * * * *

(d) *Other methods of reproduction for record retention.* If approved by the district director in which a broker has been granted a permit and in which he has records located, a broker may use, in lieu of original documents, methods or reproduction other than microfilm, including microfiche, for the reproduction of records, provided the requirements of paragraphs (b) and (c) of this section are met. While original powers of attorney must be retained, copies also may be retained.

20. Further, § 111.23 is amended by adding new paragraphs (e), (f), and (g), to read as follows:

§ 111.23 Retention of records.

* * * * * * *

(e) *Exemption.* (1) *Applicability.* The procedure to maintain financial records on a centralized system basis is available to brokers

who have been granted permits to do business in more than one district.

(2) *Request.* A written request for authorization to maintain financial records on a centralized system basis shall be submitted to the regional commissioner responsible for the region in which the centralized records are to be maintained. The written request shall include:

(i) The address at which the broker desires to maintain the centralized accounting records. This location must be within a district where the broker has been granted a permit.

(ii) A detailed statement describing all the records of financial transactions to be maintained at the centralized location, the methodology of record maintenance, a description of any automated data processing to be applied, and a list of all the broker's customs business activity locations.

(iii) An agreement that if the authorization is granted, no change in the records, the manner of recordkeeping, or the location at which they will be maintained, will be made unless approved by Customs. Each request for a change requires prior approval in the same manner as prescribed above.

(iv) An agreement to comply with § 111.22,

(v) An agreement that all financial records pertaining to customs transactions will be made available to Customs for complete inspection in accordance with § 111.25 and § 162.1d of this Chapter after reasonable notice in writing has been provided.

(3) *Approval.* After the broker's request has been received and reviewed by the regional commissioner, he shall advise the broker, in writing, of his decision whether to authorize the broker to maintain financial records on a centralized system basis. If the regional commissioner denies the request he shall advise the broker of the reasons. Denial shall be without prejudice to reapply for an exemption. If the request involves records from districts not within the jurisdiction of the regional commissioner of the region where the request was filed, the regional commissioner should consult with the other affected regional commissioners before acting on the request.

(f) *Withdrawal of exemption.* Whenever an audit by Customs indicates that a broker to whom an exemption has been granted is not keeping records in accordance with the requirements of paragraph (e) of this section, the regional commissioner who granted the exemption shall notify the broker, in writing, of the audit finding(s). The regional commissioner shall provide the broker with 30 days from the date of notification to respond to the audit finding(s) unless a shorter period is deemed necessary. If the broker fails to respond, or if the regional commissioner determines that a broker has not responded satisfactorily to the audit finding(s), the regional commissioner shall withdraw the exemption by notice in writing. The withdrawal shall not become effective until 30 days after the

date of mailing of the notice. The broker shall thereafter keep and maintain records as required by paragraph (a) of this section.

(g) *Reproduction of centralized accounting records.* The regional commissioner for the region in which a broker has been granted an exemption to maintain financial records on a centralized system basis, provided in paragraph (e) of this section, is responsible for approving requests for the reproduction of centralized financial records provided under paragraphs (b) and (d) of this section.

21. Sections 111.24 and 111.25 are amended by removing the words "Books and papers" in the section headings and, in each instance inserting, in their place, "Records".

22. The first sentence of §§ 111.24, 111.25, and 111.27, the second sentence of § 111.27, and the section heading of § 111.26 and 111.27 are amended by removing the words "books and papers" and, in each instance inserting, in their place, "records".

23. Section 111.26 is amended by removing the words "book or paper" and inserting, in their place, "record".

24. Section 111.28 is amended by revising paragraph (b) and adding a new paragraph (c), to read as follows:

§ 111.28 Responsible supervision.

* * * * * * *

(b) *Employee information.*

(1) *Current employees; General.* Each broker shall submit, in writing, to each district director where the broker has a permit to transact customs business, a list of the names of persons currently employed in that district. For each such employee, the broker also shall provide the current home address, last prior home address, social security number, date and place of birth, and if the employee has been employed by the broker for less than 3 years, the name and address of each former employer and dates of employment for the 3–year period preceding current employment with the broker. After the initial submission, the list shall be updated and submitted with the status report required by § 111.30(d) of this part.

(2) *New employees.* Within 10 days after a new employee has been employed for 30 days, the broker shall submit, in writing, to the district director, the same information as set forth above for any new employee.

(3) *Terminated employees.* Within 30 days after the termination of employment of any employee employed longer than 30 days, the broker shall submit, in writing, to the district director, the name of the terminated employee.

(4) *Broker's responsibility.* A broker is responsible for providing the information required in paragraphs (b)(1), (b)(2), and (b)(3) of this section. However, in the absence of culpability by the broker, Customs will not hold him responsible for the accuracy of the information provided to the broker by the employee.

(c) *Termination of qualifying member or officer.* If a licensed broker who is a qualifying member of a partnership, or officer of an association or corporation, ceases his employment as a qualified member or officer, that broker shall give written notice immediately of that fact to the Commissioner and send a copy of the written notice to each district director where a permit has been granted to the partnership, association, or corporation.

25. Section 111.29(a) is revised to read as follows:

§ 111.29 Diligence in correspondence and paying monies.

(a) *Due diligence by broker.* Each broker shall exercise due diligence in making financial settlements, in answering correspondence, and in preparing or assisting in the preparation and filing of records relating to any customs business matter handled by him as a broker. Payment of duty, tax, or other debt or obligation owing to the Government for which the broker is responsible, or for which the broker has received payment from a client, shall be made to the Government on or before the date that payment is due. Payments received by a broker from a client after the due date shall be transmitted to the Government within 5 working days from receipt by the broker. Each broker shall provide a written statement to a client accounting for funds received for the client from the Government, or received from a client where no payment has been made, or received from a client in excess of the Governmental or other charges properly payable as part of the client's customs business, within 60 days of receipt. No written statement is required if there is actual payment by a broker of such funds.

26. Section 111.30 is amended by revision the section heading and paragraph (b) to read as follows, by removing the words "is licensed" in the first sentence of paragraph (c) and inserting in their place, "has been granted a permit", by revising paragraph (d) and adding a new paragraph (e) to read as follows:

§ 111.30 Notification of change of business address, organization, name, or location of business records; status report.

* * * * * * *

(b) *Organization.* A partnership, association, or corporation shall immediately inform the Commissioner and each district director of the districts in which it has a permit, of the following changes:

(1) The date on which the licensed member or officer who is the qualifying member or officer ceases to be a member or officer and the name of the broker who will succeed as the qualifying member or officer; or

(2) Any change in the Articles of Agreement, Charter, or Articles of Incorporation relating to the transactions of customs business.

* * * * * * *

(d) *Status report.* Each broker shall file a status report with Customs on February 1, 1979, and on February 1 of each third year

thereafter. The report shall be accompanied by a fee as set forth in § 111.96. A report received during the month of February will be considered filed timely. The report shall be addressed to the U.S. Customs Service, Attention: Entry, Licensing and Restricted Merchandise Branch, Washington, D.C. 20229. A copy also shall be filed with the district director in each district where the broker has been granted a permit to transact customs business. No form or particular format is required. Each individual broker shall state whether he is actively engaged in transacting business as a broker. If so, he shall state the name under, and the address at which, his business is conducted (if he is a sole proprietor); or the name and address of his employer, unless employer is a corporation, partnership or association broker for which he is a qualifying officer or member. The report of each corporation, partnership or association shall state the name under which its business as a broker is being transacted, its business address, the names and addresses of the members of the partnership or officers of the corporation or association qualifying it for a license, and whether it is actively engaged in transacting business as a broker. If the licensed person fails to file the required report by March 1 of the reporting year, the license is suspended by operation of law on that date. By March 31 of the reporting year, the Commissioner shall transmit written notice of the suspension to the licensee by certified mail, return receipt requested, at the address reflected in Customs records. If the licensed person files the required report within 60 days of receipt of the notice, the license shall be reinstated upon payment of $100. If the licensed person does not file the required report within the 60-day period, the license shall be revoked without prejudice to the filing of an application for a new license. Notice of the revocation shall be published in the CUSTOMS BULLETIN.

(e) *Location.* Upon the permanent termination of a brokerage business, both the Commissioner and the district director of each Customs district for which a permit has been issued shall be provided written notification of the name and address of the party having legal custody of the brokerage business records. Reponsibility for notification shall be as follows:

(1) The broker, upon the permanent termination of his brokerage business:

(2) The licensed partner(s), upon the permanent termination of the partnership brokerage business;

(3) The licensed association or corporate officer(s), upon the permanent termination of the association or corporate brokerage business.

27. Section 111.35 is amended by removing the words "merchandise imported after March 15, 1962," and inserting in their place, "customs transactions".

28. The heading and text of § 111.37 are revised to read as follows:

§ 111.37 Misuse of license or permit.

A broker shall not permit his license, permit or his name to be used by or for any unlicensed person, other than his own employees authorized to act for him, or by or for any broker whose license or permit is under suspension in the solicitation, promotion or performance of any customs business or transaction.

29. The heading and text of § 111.43 are revised to read as follows:

§ 111.43 Display of license and permits.

Each licensee shall display its permit in the principal office within the district so it may be seen by anyone transacting business in the office. Photocopies of the permit shall be conspicuously posted in each branch office within the district. Photocopies of the license also may be posted.

30. Part 111 is revised by adding a new § 111.45 to read as follows:

§ 111.45 Revocation by operation of law.

(a) *License.* The failure of a broker that is licensed as a corporation, association, or partnership to have, for any continuous period of 120 days, at least one officer of the corporation or association, or at least one member of the partnership, validly licensed, shall, in addition to causing the broker to be subject to any other sanction, result in the revocation by operation of law of its license and any permits issued to a corporation, association, or partnership. The Commissioner will notify the broker in writing of an impending revocation or lapse by operation of law 30 days before the revocation or lapse is due to occur.

(b) *Permit.* On or after October 31, 1987, the failure of a broker who has been granted a permit, to employ, for any continuous period of 180 days, at least one individual who is licensed within the district (or region, if an exception has been granted pursuant to § 111.19(d)), for which a permit was issued, shall, in addition to causing the broker to be subject to any other sanction, result in the revocation of the permit by operation of law.

(c) *Notification.* If the license or permit of a partnership, association, or corporation is revoked by operation of law, the Commissioner will notify the organization of the revocation. If an individual broker's permit is revoked by operation of law, the Commissioner will notify the broker. A copy of the notice will be sent to the district director. Notice to the public of the revocation will be given by publication in the CUSTOMS BULLETIN.

31. The heading for Subpart D is revised to read as follows:

SUBPART D—CANCELLATION, SUSPENSION, OR REVOCATION OF LICENSE OR PERMIT, OR MONETARY PENALTY IN LIEU THEREOF

32. Part 111 is revised by adding a new § 111.50 to read as follows:

§ 111.50 General.

This subpart relates to cancellation, suspension, or revocation of a license or a permit, or assessment of a monetary penalty in lieu thereof under the provisions of § 641(d)(2)(B), Tariff Act of 1930, as amended (19 U.S.C. 1641(d)(2)(B)). The provisions for assessment of a monetary penalty under § 641(b)(6) and § 641(d)(2)(A), Tariff Act of 1930, as amended (19 U.S.C. 1641(b)(6), 1641(d)(2)(A)), are contained in Subpart E.

33. The heading and text of § 111.51 are amended by adding the words "or permit" after "license" each time it is used.

34. Section 111.52 is revised to read as follows:

§ 111.52 Voluntary suspension of license or permit.

The Commissioner may accept a broker's written voluntary offer of suspension for a specific period of time of the broker's license or permit under such terms and conditions as the parties may agree.

35. The heading and text of § 111.53 are revised to read as follows:

§ 111.53 Grounds for suspension or revocation of license or permit or monetary penalty in lieu thereof.

Other than as set forth below, the appropriate Customs official may suspend, for a specific period of time, or revoke the license or permit of any broker or assess a monetary penalty in lieu of suspension or revocation, for the following reasons:

(a) The broker has made or caused to be made in any application for any license or permit under this part, or report filed with Customs, any statement which was, at the time and in light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any application or report any material fact which was required.

(b) The broker has been convicted, at any time after filing of an application for a license under § 111.12, of any felony or misdemeanor which the appropriate Customs officer finds:

(1) involved the importation or exportation of merchandise;

(2) arose out of the conduct of customs business; or

(3) involved larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds (infractions set forth in this subparagraph may form the basis for an action to suspend or revoke only);

(c) The broker has violated any provision of any law enforced by Customs or the rules or regulations issued under any such provision;

(d) The broker has counseled, commanded, induced, procured, or knowingly aided or abetted the violation by any other person of any provision of any law enforced by Customs or the rules or regulations issued under any such provision;

(e) The broker has knowingly employed, or continues to employ, any person who has been convicted of a felony, without the written approval of the Commissioner; or

(f) The broker has, in the course of customs business, with intent to defraud, in any manner willfully and knowingly deceived, misled or threatened any client or prospective client.

36. Section 111.54 is amended by removing the words "§ 641(b) of the Tariff Act of 1930, as amended (19 U.S.C. 1641(b))" in the first sentence and inserting, in their place, "§ 641(d)(2), Tariff Act of 1930, as amended (19 U.S.C. 1641(d)(2))".

37. Section 111.57(b) is revised to read as follows:

§ 111.57 Determination by Commissioner.

* * * * * * *

(b) *Determination to prefer charges.* If the Commissioner determines that charges will be preferred, he shall notify the district director of his determination and require that a proposed statement of charges be prepared for his review, if not previously submitted.

38. Section 111.58 is amended by removing the last sentence and by adding a new sentence between the first and second sentences to read as follows:

§ 111.58 Content of statement of charges.

* * *The statement of charges also shall specify the sanction being proposed (e.g., suspension of the broker's license, or revocation of the license) but if a suspension is proposed the charges need not state a specific period of time for which suspension is proposed.* * *

39. Section 111.59(a) is amended by removing the words "Unless the Commissioner, under § 111.57, has determined that the preliminary proceedings shall not be followed, the" and inserting, in their place, "The", and by revising paragraph (b) to read as follows:

§ 111.59 Preliminary proceedings.

* * * * * * *

(b) *Notice of preliminary proceedings.* The district director shall serve upon the broker, as set forth in § 111.63, written notice that:

(1) Transmits a copy of the proposed statement of charges;

(2) Informs him that formal proceedings are available to him;

(3) Informs him that 5 U.S.C. 554 and 558 will be applicable if formal proceedings are necessary;

(4) Invites him to show cause why the formal proceedings should not be instituted;

(5) Informs him that he may make submissions and demonstrations of the character contemplated by the cited statutory provisions;

(6) Invites any negotiation for settlement of the complaint or charge that the broker deems it desirable to enter into;

(7) Advises him of his right to be represented by counsel;

(8) Specifies the place where the broker may respond in writing; and

(9) Advises the broker that the response must be received within 30 days of the date of the notice.

40. Sections 111.58 and 111.60 are amended by removing the word "defense" and inserting, in its place "response", wherever it appears.

41. Section 111.61 is amended by inserting the words "no response is filed or" between "If" and "the" in the fourth sentence.

42. Section 111.64(a) is amended by removing the number "5" and inserting, in its place, "15".

43. Section 111.65 is amended by removing the words "on the ground that additional time is necessary to prepare a defense" and inserting, in their place, "for good cause".

44. Section 111.66 is amended by removing the words "on behalf of the Government" in the first sentence inserting, in their place, "by the parties", and the words "suspension or revocation" in the last sentence and inserting, in their place, "suspension for a specified period of time or revocation or monetry penalty in lieu thereof".

45. Section 111.67 is amended by revising paragraphs (a) and (d) and adding a new paragraph (e) to read as follows:

§ 111.67 Hearing.

(a) *Hearing officer.* The hearing officer shall be an administrative law judge appointed pursuant to 5 U.S.C. 3105.

* * * * * * *

(d) *Transcript of record.* The district director shall provide a competent reporter to make a record of the hearing. When the record of the hearing has been transcribed by the reporter, the district director shall deliver a copy to the hearing officer, the broker and the Government representative without charge.

(e) *Government representatives.* The Commissioner shall designate one or more persons to represent the Government at the hearing.

46. The heading and text of § 111.74 are revised to read as follows:

§ 111.74 Decision and notice of suspension or revocation or monetary penalty.

If the Secretary of the Treasury, in the exercise of his discretion based solely on the record, issues an order of suspension for a specified period of time or revocation of the license of a broker or a monetary penalty in lieu thereof, the Commissioner will notify the broker in writing and publish a notice of suspension or revocation or monetary penalty in lieu thereof in the Federal Register and in the CUSTOMS BULLETIN unless an appeal is filed by the broker in the

Court of International Trade as provided for under § 641(e), Tariff Act of 1930, as amended (19 U.S.C. 1641(e)). The order of suspension or revocation shall become effective 60 days after the issuance of such order unless the Secretary finds that a more immediate effective date is in the national or public interest. If a monetary penalty is assessed and no appeal is filed, that penalty shall be tendered within 120 days of the issuance of the order, or the license shall automatically be suspended until payment is made.

47. Section 111.75 is revised to read as follows:

§ 111.75 Appeal from the Secretary's decision.

An appeal from the order of the Secretary of the Treasury suspending or revoking a license or permit or assessing a monetary penalty in lieu thereof may be taken in accordance with the provisions of § 641(e), Tariff Act of 1930, as amended (19 U.S.C. 1641(e)). The commencement of such proceedings shall, unless specifically ordered by the Court, operate as a stay of the Secretary's order.

48. Section 111.76 is amended by removing the words "hearing officer" in the first sentence of paragraph (a) and in every sentence of paragraph (b) and, in each instance, inserting, in their place, "Commissioner".

49. Section 111.80 is revised to read as follows:

§ 111.80 Saving provision.

Any proceeding for revocation or suspension of a license instituted prior to October 30, 1984, shall be governed by the provisions of 19 CFR Part 111 which were in force at the time the proceeding was instituted. For the purposes of this provision, the commencement of preliminary proceedings shall be considered the institution of proceedings for revocation or suspension, is preliminary proceedings were held.

50. Part 111 is amended by adding a new § 111.81 to read as follows:

§ 111.81 Settlement and compromise.

The Commissioner, with the approval of the Secretary of the Treasury, may settle and compromise any disciplinary proceeding which has been instituted under this Part according to the terms and conditions agreed to by the parties, including but not limited to the reduction of any proposed suspension or revocation to a monetary penalty.

51. Further, Part 111 is amended by adding a new Subpart E and § 111.91 through § 111.95 to read as follows:

SUBPART E—MONETARY PENALTY

§ 111.91 Grounds for imposition of a monetary penalty; maximum penalty.

The appropriate Customs officer may assess a monetary penalty or penalties as follows: (a) an amount not to exceed an aggregate of $30,000 for any of the reasons set forth in § 111.53, except for those listed in paragraph (b)(3) of that section or (b) an amount not to exceed an aggregate of $30,000 for all violations and $10,000 for each violation of § 111.4.

§ 111.92 Notice.

The appropriate Customs officer shall issue a written notice which advises the broker or other person of the allegations or complaints against him and explains that the person has a right to respond to the allegations or complaints in writing within 30 days of the date of mailing of the notice. The district director has discretion to provide additional time for good cause. Any notice, the basis of which is an alleged violation of § 111.53(b) or which exceeds and aggregate of $10,000 for all alleged violations, shall be referred to the Director, Entry Procedures and Penalties Division, Customs Headquarters, for approval before it is issued.

§ 111.93 Application for relief.

The person shall follow the procedures set forth in Part 171 of this Chapter in filing an application for relief.

§ 111.94 Decision of appropriate Customs officer.

The appropriate Customs officer shall follow the procedures set forth in Part 171 of this Chapter in considering the application for relief. After the appropriate Customs officers have considered the allegations or complaints and any timely response made, a written decision shall be issued which sets forth the final determination and the findings of fact and conclusions of law on which the determination is based. If the final determination is that the person is liable for a monetary penalty, the person shall pay, or make arrangements for payment, within 60 days of the date of the final determination. If the monetary penalty is not paid or arrangements made for payment within the time limitations, the appropriate Customs officer shall refer the matter to the Department of Justice for institution of appropriate judicial proceedings.

§ 111.95 Supplemental petition for relief.

A final determination of the district director or other appropriate Customs officer in excess of $1,000 may be the subject of a supplemental petition for relief under the provisions of § 171.33 of this Chapter. A final determination of $1,000 or less is a final decision and is not subject to further administrative review.

52. Part 111 is amended by removing the words "Customhouse broker" and "Customhouse brokers" wherever they appear and inserting, in their place, "Customs broker" and Customs brokers", respectively.

53. Section 111.96 is revised to read as follows:

§ 111.96 Fees.

(a) *License fee.* Each applicant for a broker's license pursuant to § 111.12, or by special examination pursuant to § 111.13(c), shall be charged a fee of $300 to defray the costs to Customs for the preparation and administration of the examination and other expenses in processing the application. If an applicant either fails to appear for an examination without giving notice at least 24 hours before the examination, or does not pass the examination required by § 111.11(a)(4), $100 of the fee will be refunded.

(b) *Permit fee.* Each application for a permit pursuant to § 111.19 shall be accompanied by a one-time fee of $100 to defray the costs of processing the application. If for any reason a permit lapses or is revoked, payment of the permit fee is necessary before the permit can be reinstated.

(c) *User fee.* An annual user fee of $125 will be assessed for each permit held by an individual, partnership, association or corporate broker.

(1) The fee is payable for each calendar year in each district where a broker has a permit to do business. If a broker receives a permit at a time other than the beginning of a calendar year, the full $125 must be paid immediately. If a broker fails to pay the fee by January 1 of each year or immediately at the time he receives his permit, the district director will notify the broker in writing of failure to pay and revoke the permit to operate. The notice will constitute revocation of the permit.

(2) For calendar year 1986, brokers must remit payment of $125 by August 5, 1986, in each district where they have a permit to do business. If payment is not made by August 5, 1986, notice will be given and revocation will be effective August 5, 1986.

(d) *Status report fee.* The status report provided for in § 111.30 shall be accompanied by a fee of $100 to defray the costs of administering the reporting requirement.

(e) *Payment of fee.* All fees shall be paid by check or money order payable to the U.S. Customs Service.

PART 171—FINES, PENALTIES, AND FORFEITURES

1. The authority citation for Part 171, Customs Regulations (19 CFR Part 171), is revised to read as set forth below.

Statutory citations appearing elsewhere in Part 171 are removed.

Authority: 19 U.S.C. 66, 1592, 1618, 1624.

a. § 171.14 also issued under 46 U.S.C. 883.

b. Subpart C also issued under 19 U.S.C. 1641, 22 U.S.C. 401, 46 U.S.C. 7, 320.

c. § 171.44 also issued under 40 U.S.C. 304j, 304k.

2. Section 171.12(b) is amended by removing the words "paragraph (c)" and inserting, in their place, "paragraph (c) or (d)".

3. Paragraph (d) of § 172.12 is redesignated as paragraph (e) and a new paragraph (d) is added to read as follows:

§ 171.12 Filing of petition.

* * * * * * *

(d) *Petitions for remission or mitigation of monetary penalty.* Petitions for remission or mitigation of a monetary penalty assessed under the provisions of Part 111, Subpart E, shall be filed within 30 days of the date of mailing of the notice.

* * * * * * *

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for Part 178 continues to read as follows:

Authority: 5 U.S.C 301, 19 U.S.C. 1624, 44 U.S.C. 3501 *et seq.*

2. Section 178.2 is amended by deleting OMB Control No. 1515–0089 and the entry pertaining to it and the language presently pertaining to OMB Control No. 1515–0100 and inserting the following in the appropriate numerical sequence according to the section number under the columns indicated:

§ 178.2 Listing of OMB control numbers.

19 CFR Section	Description	OMB Control No.
Part 111	Requirements that licensed customs brokers must keep current records of all accounts and all financial transactions as a broker	1515–0100

WILLIAM VON RAAB,
Commissioner of Customs.

Approved: July 31, 1986.
FRANCIS A. KEATING II,
Assistant Secretary of the Treasury.

[Published in the Federal Register, August 26, 1986 (51 FR 30336)]

19 CFR Part 101

(T.D. 86–162)

CUSTOMS REGULATIONS AMENDMENT RELATING TO A CHANGE IN THE CUSTOMS SERVICE FIELD ORGANIZATION—BRUNSWICK, GEORGIA

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to change the Customs field organization by extending the geographical limits of the port of entry at Brunswick, Georgia. Currently, Customs officers at the port service many locations which are outside the Brunswick city limits, those limits having been the unofficial port limits. This expansion will better serve the public by including several locations routinely requiring Customs service within the official port limits.

EFFECTIVE DATE: September 25, 1986.

FOR FURTHER INFORMATION CONTACT: Richard Coleman, Office of Inspection and Control (202–566–8157).

SUPPLEMENTARY INFORMATION:

BACKGROUND

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public, by notice published in the Federal Register on February 3, 1986 (51 FR 4172), Customs proposed to amend § 101.3, Customs Regulations (19 CFR 101.3), by extending and officially defining the geographical limits of the port of entry of Brunswick, Georgia, located in the Savannah, Georgia, Customs District in the Southeast Region.

Currently, there is no official definition of the Brunswick port limits. The Brunswick city limits have been serving as the port limits. However, Customs officers at the port routinely service many locations which are outside the city limits, and an additional out-of-port terminal facility recently began operation. Therefore, it was proposed to expand the Brunswick port limits to include those several locations now receiving service.

DISCUSSION OF COMMENTS

In response to the notice, only one was received. No specific opposition was raised in regards to the expansion and redefinition of the port limits. The commenter was against increasing ports of entry. This change does not increase the number of ports of entry. Therefore, after further review of the matter, Customs has determined that it is in the public interest to extend and redefine the geographical limits of the port of entry of Brunswick.

The expanded port limits are as follows: Beginning from the intersection of the boundary between the counties of Camden and Glynn and the Atlantic Ocean, and proceeding in a northwesterly direction along the Little Satilla River to U.S. Highway Interstate 95; then in a northeasterly direction along U.S. Highway Interstate 95 to the boundary between McIntosh and Glynn Counties; then in a easterly direction along the Altahama River to the Atlantic Ocean; then in a southerly direction along the Atlantic coaastline to the place of beginning.

CHANGES IN THE CUSTOMS FIELD ORGANIZATION

The Secretary of the Treasury is advised by the Commissioner of Customs in matters affecting the establishment, abolishment, or other change in ports of entry. Customs ports of entry are established under the authority vested in the President by § 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by Executive Order No. 10289, September 17, 1951 (3 CFR 1949–1953 Comp., Ch. II), and pursuant to authority provided by Treasury Department Order No. 101–5 (47 FR 2449).

LIST OF SUBJECTS IN 19 CFR PART 101

Customs duties and inspection, Exports, Imports, Organization and functions (Government agencies).

AMENDMENTS TO THE REGULATIONS

PART 101—GENERAL PROVISIONS

1. The authority citation for Part 101, Customs Regulations (19 CFR Part 101), continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 1, 66, 1202 (Gen. Hdnote 11), 1624, Reorganization Plan 1 of 1965; 3 CFR 1965 Supp.

2. To reflect this change, the list of Customs regions, districts, and ports of entry in § 101.3(b), Customs Regulations (19 CFR 101.3(b)), is amended by removing the period after "Brunswick" in the column headed "Ports of entry" in the Savannah, Georgia, Customs District of the Southeast Region and inserting, in its place, the phrase, "including the territory described in T.D. 86–162."

REGULATORY FLEXIBILITY ACT

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this document. Customs routinely establishes, expands, and consolidates Customs ports of entry throughout the U.S. to accommodate the volume of Customs-related activity in various parts of the country. Although this change may have limited effect upon some small entities in the Brunswick, Georgia area, it is not

expected to be significant because the extension of the limits of Customs ports of entry in other locations has not had a significant economic impact upon a substantial number of small entities to the extent contemplated by the Regulatory Flexibility Act. Accordingly, it is certified under provisions of § 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the amendment will not have a significant economic impact on a substantial number of small entities.

EXECUTIVE ORDER 12291

Because the amendment relates to the Customs field organization, and will not result in a "major rule" as defined in § 1(b) of E.O. 12291, the regulatory impact analysis and review prescribed by the E.O. are not reguired.

DRAFTING INFORMATION

The principal author of this document was John E. Doyle, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

ALFRED R. DEANGELUS,
Acting Commissioner of Customs.

Approved: August 5 1986.
FRANCIS A. KEATING,
Assistant Secretary of the Treasury.

[Published in the Federal Register, August 26, 1986 (51 FR 30335)]

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19 CFR Part 177

(T.D. 86-163)

REVISION OF GUIDELINES CONCERNING TARIFF CLASSIFICATION OF IMPORTED BACKPACKING TENTS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revised guidelines.

SUMMARY: Pursuant to a court decision that recognized backpacking as a sport, Customs developed a set of guidelines to use to determine which imported backpacking tents qualify a sports equipment for tariff purposes. Those guidelines established parameters concerning the material, capacity, dimensions, and weight of tents. However, due to technological advances involving tent material and construction methods, Customs was of the opinion that the guidelines may have become obsolete. Comments were solicited on the matter, and after review and further analysis, this document sets forth a revised set of guidelines for the classification of imported

backpacking tents. Use and application of the new guidelines will in some instances result in higher rates of duty being assessed on certain tents that will no longer qualify as sports equipment.

EFFECTIVE DATE: The revised guidelines will become effective for all merchandise entered for consumption or withdrawn from warehouse for consumption on or after November 24, 1986.

FOR FURTHER INFORMATION CONTACT: Jeremy Baskin, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. (202–566–8181).

SUPPLEMENTARY INFORMATION:

BACKGROUND

On July 8, 1985, Customs published a notice in the Federal Register (50 FR 27831), that the guidelines used to determine the tariff classification of imported backpacking tents were being reviewed. The necessity for these guidelines resulted from the decision in *The Newman Importing Co., Inc.* v. *United States,* 76 Cust. Ct. 143, C.D. 4648 (1976), wherein the court held that backpacking was a sport and tents used in pursuit of backpacking could be considered sport equipment. This made it necessary to distinguish between tents used for backpacking and tents used for other purposes.

Those guidelines, published in C.S.D. 79–108 (August 21, 1978) are as follows:

(1) Backpacking tents must be composed of dacron or nylon.

(2) Such tents must be designed for no more than 4 persons.

(3) If designed for 1 or 2 persons, the tents must weigh no more than 10 pounds, including all accessories necessary to pitch the tent, and have a carry size of no more than 24 inches in length and 8 inches in diameter.

(4) If designed for 3 or 4 persons, the tents must weigh no more than 15 pounds, including all accessories necessary to pitch the tent, and have a carry size of no more than 36 inches in length and 12 inches in diameter.

Tents meeting these guidelines are currently classified as sport equipment, not specially provided for, in item 735.20, Tariff Schedules of the United States (TSUS; 19 U.S.C. 1202), at a rate of duty of 5.04 percent ad valorem. Prior to the issuance of these guidelines Customs had been classifying backpacking tents under item 389.60, TSUS, a residual provision for articles of textile materials.

Since those guidelines were issued in 1978, technological advances in tent material and construction methods have occurred which permit tent manufacturers to produce lightweight camping tents for general recreational use, so-called family or car camping tents. These lightweight camping tents fall within the specifications of the 1978 guidelines and, therefore, for Customs purposes, are classified in item 735.20, TSUS, although the tents were not "specially designed" for backpacking within the meaning of *Newman*

Importing, supra. Tents not designed as sport equipment for backpacking should be classified under the provision for tents and sleeping bags, of manmade fibers, in item 386.11, TSUS, at a current rate of duty of 12.5 percent ad valorem.

To correct this situation, Customs proposed that a revised set of guidelines be used for classifying tents. These revisions were planned to account for new materials and construction methods and return the classification scheme to one consistent with the intent of *Newman Importing, supra.* The proposed revised guidelines were as follows:

To qualify for classification as "sport equipment" under item 735.20, TSUS, Customs is of the opinion that a tent must meet the following guidelines:

(1) It must be specially designed for the sport of backpacking.

(2) It must be composed of nylon or polyester fabric.

(3) If designed for 1 or 2 persons, the tent must meet the following criteria:

(a) Have a floor area of 45 square feet or less;

(b) Weigh 8½ pounds or less, including tent bag and all accessories necessary to pitch the tent;

(c) Have a carry size of 30 inches or less in length and 9 inches or less in diameter. If other than cylindrical in shape, the tent package must not exceed 1,900 cubic inches.

(4) If designed for 3 or 4 persons, the tent must meet the following criteria:

(a) Have a floor area of 65 square feet or less;

(b) Weigh 12 pounds or less, including tent bag and all accessories necessary to pitch the tent;

(c) Have a carry size of 30 inches or less in length and 10 inches or less in diameter. If other than cylindrical in shape, the tent package must not exceed 2,350 cubic inches.

Any tent with a floor space of more than 65 square feet and a standing height of more than 60 inches is a tent designed for general recreational use. Written comments were solicited concerning this proposal.

Discussion of Comments

Seven comments were received, the majority being favorable. Those in favor generally were of the view that lightweight tents for general recreational use should not be classifiable as sports equipment.

Four commenters suggested that the language as to fabric content be broadened. Specifically, it was requested that item 2 of the criteria be amended to read "2) It must be composed of nylon, polyester or any other fabric of man-made fibers." The commenters

claimed that such a definition would encourage and permit the development and use of higher technology fabrics and finishes. Customs agrees with this change and has incorporated it into the final revised guidelines.

Another concern of three commenters was the current practice of certain importers entering tent "skins", i.e., the fabric portion of the tent, separately from the metal frame portion in order to comply with the size and weight standards of the guidelines. Through such action these importers would receive the more favorable duty treatment that the sport equipment classification provides. It is proposed that the revised guidelines specifically address this issue and permit classification of tent "skins" under item 735.20, TSUS, only if Customs is supplied with the remainder of the tent package that will actually be sold with the tent skin and that the entire package comply with the provisions of these guidelines.

Customs agrees that tent "skins" imported separately from the total tent package should not be classified as sport equipment unless the entire package complies with the guidelines. Customs would go further, however, and deny classification of tent "skins" as sport equipment unless proof satisfactory to Customs is provided that the entire package of which the "skins" are a part complies with the guidelines. If any part of the tent package (including tent skin, frame, tent bag, accessories or packing) is not imported in the same shipment with all remaining parts, in order to receive the benefit of the sport equipment classification for such part, the importer must supply Customs with a sample of the complete tent package so a determination of compliance can be made. The burden in such situations shall be on the importer.

One commenter suggests that an effective date for the guidelines of July 1, 1986, should be promulgated. This would ensure that the revised guidelines apply only to prospective transactions. Many transactions have been negotiated in the industry on the basis of existing guidelines. Through specification of the July 1, 1986, effective date, the guidelines would become effective without compromising those transactions. Customs agrees that the effective date of these revised guidelines should provide sufficient time for the industry to adjust. However, instead of naming a specific date which might provide too short a period when finally published, the revised guidelines will come effective for merchandise entered for consumption or withdrawn from warehouse for consumption 90 days after publication in the Federal Register.

One commenter who generally favors the proposed guidelines suggests further refinement of the guidelines to provide specific measurements for 3 as well as 4-person tents. Customs does not believe separate guidelines for 3 and 4-person tents are necessary. Further refinement will only serve to cause confusion and defeat the purpose of relatively uncomplicated guidelines.

One commenter states that the phrase "sport of backpacking" is ambiguous. We do not agree. In *Newman Importing, supra*, the court provided a clear definition, holding backpacking to be "an activity in which persons travel on foot in wild areas and maintain themselves with supplies and equipment carried on their backs * * *". *The Newman Importing Co., Inc.* v. *United States, supra*, at p. 144. These guidelines are an inappropriate forum in which to expand clear judicial definition.

Three commenters state that no technological advances have occurred that warrant revision of the guidelines. Customs notes that this view is in direct contravention to statements made by other commenters taking notice of the changes that technology has wrought in this area. Without further proof that no advances have been made, the bare statements of these commenters cannot be accepted.

One commenter requested that an alternative standard of measurement be made applicable because of nontraditional tent packages that are now being marketed. Customs is of the view that the new guidelines take such alternatives into account. Carry size may now be measured in cubic inches. The guidelines further recognize that not all tents are carried in a cylindrical shape.

One commenter suggests that backpacking tents should be classified on the basis of their portability. The physical measurements and weight of the tent are deemed to be arbitrary standards upon which to classify the tent. Customs is of the view that this argument is without merit. Portability is an absolutely subjective means upon which no meaningful standards can be constructed. The only sensible method of determining a tent's eligibility for classification as a backpacking tent is by quantifying its size and weight.

It was noted by one commenter that technological advances have expanded the numbers and styles of tents available to the backpacker and that the proposed guidelines would curtail the choices available. Customs notes that many of the tents entering under the current guidelines are general recreational tents and not those contemplated by judicial decision as qualifying for treatment as sport equipment.

Finally, one commenter states that size restrictions penalize tall people who wish to backpack. The guidelines do not take into account the comfort of these backpackers. Customs is of the opinion that backpacking tents are not designed for the storage of gear and equipment, changing, standing, or eating, but rather to serve as a shelter and a temporary sleeping area for backpackers. Therefore, Customs believes that the square footage and size criteria in the revised guidelines are more than ample for the designated number of persons. The tents qualifying for the tariff classification as sport equipment are not to be used for general recreation.

REVISED GUIDELINES

The following are the final revised guidelines governing the classification of imported backpacking tents.

To qualify a tent as "sport equipment" under item 735.20, TSUS, the following criteria must be met:

(1) It must be specially designed for the sport of backpacking.

(2) It must be composed of nylon, polyester, or any other fabric of man-made fibers.

(3) If designed for 1 or 2 persons, the tent must meet the following criteria:

(a) Have a floor area of 45 square feet or less, and

(b) Weigh 8½ pounds or less, including tent bag and all accessories necessary to pitch the tent, and

(c) Have a carry size of 30 inches or less in length and 9 inches or less in diameter. If other than cylindrical in shape, the tent package must not exceed 1,900 cubic inches.

(4) If designed for 3 or 4 persons, the tent must meet the folllowing criteria:

(a) Have a floor area of 65 square feet or less; and

(b) Weigh 12 pounds or less, including tent bag and all accessories necessary to pitch the tent; and

(c) Have a carry size of 30 inches or less in length and 10 inches or less in diameter. If other than cylindrical in shape, the tent package must not exceed 2,350 cubic inches.

Any tent with a floor of more than 65 square feet and a standing height of more than 60 inches is a tent designed for general recreational use.

In any part of the tent package (including tent skin, frame, tent bag, accessories or packing) is not imported in the same shipment with all remaining parts, in order to receive the benefit of the sport equipment classification for such part, the importer must supply Customs with a sample of the complete tent package so a determination of compliance can be made.

DRAFTING INFORMATION

The principal author of this document was John E. Doyle, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

ALFRED R. DEANGELUS,
Acting Commissioner of Customs.

Approved: August 5, 1986.

FRANCIS A. KEATING II,
Assistant Secretary of the Treasury.

[Published in the Federal Register, August 26, 1986 (51 FR 30346)]

U.S. Customs Service

General Notices

19 CFR Chapter I

CHANGE IN TARIFF CLASSIFICATION SYSTEM

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of change in Tariff Classification System.

SUMMARY: Classification of imported merchandise for rate of duty and statistical purposes is determined presently in the U.S. by reference to the Tariff Schedules of the United States (TSUS). The U.S. intends to replace the TSUS on January 1, 1988, by acceding to the International Convention on the Harmonized Commodity Description and Coding System (HS). The HS is a multipurpose nomenclature, intended to be used to describe and classify goods in international trade for customs purposes, for reporting all import and export trade statistics, and eventually for freight and transport documentation. In view of the fundamental differences between the TSUS and HS coding schemes, Federal agencies are advised that all regulations, directives, forms, etc., which presently incorporate TSUS item numbers or references to TSUS provisions, must be revised to conform with the new U.S. prior to its implementation on January 1, 1988.

FOR FURTHER INFORMATION CONTACT: Hubbard L. Volenick, International Nomenclature Staff, 202–566–8530.

SUPPLEMENTARY INFORMATION:

BACKGROUND

The Harmonized System (HS) is the culmination of a 10 year effort by the member states of the Customs Cooperation Council (CCC), particularly the U.S. and its major trading partners, to develop a single modern structure for product classification which can be used for customs, tariff, trade statistics, and transport documentation purposes. Based on the present Customs Cooperation Council Nomenclature (CCCN), the HS is a more detailed classification scheme reflecting changes in technology, trade patterns and user requirements.

In August 1981, the President requested the U.S. International Trade Commission to initiate an investigation for the purpose of preparing a conversion of the Tariff Schedules of the U.S. (TSUS), the current reference source for determining the classification of imported merchandise, into the structure of the HS. The conversion provides numerical coding beyond the 6-digit categories of the international system, taking into account U.S. tariff and statistical requirements. Thus, each tariff provision is coded in 8-digits and the tariff reporting number in 10-digits.

This conversion, submitted to the President on June 30, 1983, was reviewed and revised by the Trade Policy Staff Committee, Office of U.S. Trade Representative, and republished as TPSC 84–76 on September 30, 1984. A further, more comprehensive, revision will be made in October 1986 and this will be the basic working document aimed at U.S. adoption of the HS.

The HS Convention was opened for signature July 1, 1983, and thus far has been signed by 45 countries and customs unions, five without reservation of ratification. The U.S. is expected to sign, subject to ratification by the Congress, in the spring of 1987.

In February 1986, the meeting of the General Agreement on Tariffs and Trade (GATT) Tariff Concessions Committee in Geneva resulted in the firm political commitments of the U.S., Canada, Japan, the European Community, the Nordic countries and Switzerland, to a January 1, 1988, date for entry into force of the International Convention on the HS.

PURPOSE OF HARMONIZED SYSTEM

The HS is a multipurpose nomenclature, intended to be used to describe and classify goods in international trade for customs purposes, for reporting all import and export trade statistics, and eventually for freight and transport docmentation. Its use is expected to increase uniformity and predictability of trade data, and promote standardization of trade and transport documentation. Implementation of the HS will impact not only all areas of trade, *i.e.*, imports, exports, transportation of goods, and trade statistics, but all aspects of customs operations, including classification and appraisement of merchandise selection for and examination of merchandise data entry into the Automated Commercial System (ACS) and the pre-release and release of goods. Brokers and importers will experience significant changes to their entry procedures.

ACTION REQUESTED OF OTHER AGENCIES

Customs directives, regulations, informational publications and forms are all being revised to conform with the proposed new commodity classification system. Federal agencies currently using TSUS item numbers in any of their publications are advised to take appropriate steps to amend their publications prior to the entry into force of the HS-based tariff system on January 1, 1988. Customs

is prepared to work with those agencies which require assistance in bringing their publications into conformity with the new tariff and will provide additional information on request.

ALFRED R. DE ANGELUS,
Acting Commissioner of Customs.

Approved: August 13, 1986.
MICHAEL H. LANE,
Acting Assistant Secretary of the Treasury.

[Published in the Federal Register, August 29, 1986 (51 FR 30933)]

IMPORTATIONS BEARING RECORDED U.S. TRADEMARKS; SOLICITATION OF PUBLIC COMMENT ON GRAY MARKET POLICY OPTIONS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Extension of comment period.

SUMMARY: This notice extends the period of time within which interested members of the public may submit comments concerning the importation of parallel imports, or so-called gray market goods, which are products manufactured overseas bearing genuine trademarks that are purchased from foreign retailers or wholesalers and imported into the U.S. without the permission of the individual or corporation who owns the rights to the trademark in the U.S. market. Customs regulations traditionally have interpreted existing U.S. law to permit these goods to enter the U.S. when the foreign and American owners of the trademark are "related". Three U.S. Courts of Appeal recently reached different conclusions concerning the validity of the regulations.

A previous solicitation for comments was published in the Federal Register on June 17, 1986 (51 FR 22005). Comments were to have been received on or before August 18, 1986. Customs has received several requests to extend the comment period because additional time is required to prepare reasonably responsive comments. Customs believes the requests have merit. Accordingly, the period of time for the submission of comments is extended to October 17, 1986.

DATE: Comments and/or data are requested on or before October 17, 1986.

ADDRESS: Comments and/or data may be submitted to and inspected at the Regulations Control Branch, U.S. Customs Service, Room 2426, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

All comments and/or data submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), between

9:00 a.m. and 4:30 p.m. on normal business days, at the address above.

FOR FURTHER INFORMATION CONTACT: Steven Pinter, Entry, Licensing and Restricted Mechandise Branch (202–566–5765).

Dated: August 15, 1986.

JOHN P. SIMPSON,
Director,
Regulations and Rulings.

[Published in the Federal Register, August 21, 1986 (51 FR 30024)]

U.S. Customs Service

Proposed Rulemakings

19 CFR Part 112

PROPOSED CUSTOMS REGULATIONS AMENDMENT CONCERNING SUSPENSION OR REVOCATION OF A CARTMAN'S OR LIGHTERMAN'S LICENSE

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations concerning the suspension or revocation of a cartman's or lighterman's license. Currently, one of the enumerated circumstances under which a district director may suspend or revoke such a license is when the holder of that license, or the officer of a corporation holding that license, is convicted of a felony, or is convicted of a misdemeanor involving theft, smuggling, or theft-connected crime.

It has come to Customs attention that a literal interpretation of the regulation allows corporation officers to commit acts constituting the specified offenses, resign from the corporation before conviction, and therefore allow the corporation to retain its cartman or lighterman license. This may occur even if the officer resigns in name only but continues to exercise control over the corporation.

Therefore, Customs now proposes to amend its regulations to permit suspension or revocation of a cartman or lighterman license if the officer of a corporation holding such a license is convicted of a felony or a misdemeanor involving theft, if the criminal act was committed while the person was still an officer of that corporation. This would end the ploy of resigning to avoid suspension or revocation of the license and would more accurately reflect Customs position that those demonstrating criminal behavior are not entitled to the position of trust involved in the professions of cartman or lighterman.

DATE: Comments must be received on or before October 27, 1986.

ADDRESS: Comments (preferably in triplicate) may be submitted to and inspected at the Regulations Control Branch, Room 2426, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Kathleen McGuigan, Office of the Chief Counsel (202–566–6245).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Part 112, Customs Regulations (19 CFR 112), contains the regulations governing the conduct of carriers, cartmen, and lightermen. Subpart C of that part set forth the regulations controlling the licensing of cartmen and lighterman. Cartmen are those who transport goods or merchandise within the limits of a port. Lightermen are those who transport goods or merchandise on a barge, scow, or other small vessel to or from a vessel within a port, or from place to place within a port.

Section 112.30, Customs Regulations (19 CFR 112.30), lists the grounds under which the license of a cartman or lighterman may be suspended or revoked. Section 112.30(a)(5) states that if the holder of such a license, or an officer of a corporation holding such a license is convicted of a felony, or is convicted of a misdemeanor involving theft, smuggling, or a theft-connected crime, the district director may suspend or revoke the license.

It has come to Customs attention that a literal interpretation of this regulation is allowing officers of corporations to commit acts constituting the specified offenses, resign from the corporation before conviction, and therefore allow the corporation to retain its cartman and lighterman license. This is occurring even in instances when the officer has resigned from his or her corporation in name only but continues to exercise control over the corporation.

Customs desires to make it clear that application of this provision is dependent upon a conviction arising from an act or acts committed while a person was a corporate officer. The person's employment status at the time of the conviction is unimportant. Therefore, resignation, discharge, demotion, or promotion, or any change in the employment status of the corporate officer prior to conviction will not preclude the district director from suspending or revoking the corporation's cartman or lighterman license.

Therefore, Customs is now proposing to amend § 112.30(a)(5) to permit suspension or revocation of a cartman or lighterman license if the officer of a corporation holding such a license is convicted of a felony, or is convicted of a misdemeanor involving theft, smuggling, or a theft-connected crime, if the criminal act was committed while the person was still an officer of that corporation. This amendment would end the ploy of the corporate officer resigning to avoid the corporation losing its cartman or lighterman license even though the resignation may be in name only. The amendment would also more accurately reflect Customs position that those demonstrating criminal behavior are not entitled to the position of trust involved in the professions of cartman or lighterman.

COMMENTS

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CRF 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

REGULATORY FLEXIBILITY ACT

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendment will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

EXECUTIVE ORDER 12291

This document does not meet the criteria for a "major rule" as specified in § 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

DRAFTING INFORMATION

The principal author of this document was John Doyle, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

LIST OF SUBJECTS

In General
Customs duties and inspection, Imports.

19 CFR Part 112
Administrative practice and procedures, Common carriers.

PROPOSED AMENDMENT

It is proposed to amend Part 112, Customs Regulations (19 CFR Part 112), as set forth below.

PART 112—CARRIERS, CARTMEN, AND LIGHTERMEN

1. The authority citation for Part 112 continues to read as follows:

Authority: 19 U.S.C. 66, 1551, 1565, 1623, 1624.

2. It is proposed to amend § 112.30(a)(5) by removing the semicolon, replacing it with a period, and adding the following, "Any change in the employment status of the corporate officer (*e.g.*, discharge, resignation, demotion, or promotion) prior to conviction for

a felony or conviction for a misdemeanor involving theft, smuggling, or a theft-connected crime resulting from acts committed while a corporate officer, will not preclude application of this provision;"

ALFRED R. DE ANGELUS,
Acting Commissioner of Customs.

Approved: August 8, 1986.
FRANCIS A. KEATING II,
Assistant Secretary of the Treasury.

[Published in the Federal Register, August 26, 1986 (51 FR 30376)]

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19 CFR Part 6

PROPOSED CUSTOMS REGULATIONS AMENDMENTS RELATING TO INTERNATIONAL AIRCRAFT REPORTING REQUIREMENTS AT DOUGLAS, ARIZONA

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations relating to the requirements concerning the arrival and reporting to Customs of civil aircraft at Douglas, Arizona.

Within the Douglas, Arizona, area there are two airports: Bisbee-Douglas International, which has been designated as an "international airport", and Douglas Municipal, a "landing rights" airport. Bisbee-Douglas International has also been designated by Customs as one of the airports at which private aircraft arriving from areas south of the U.S. must land for Customs processing.

Because of minimal use of the facility and due to various enforcement considerations detailed in this document, it is not feasible for Customs to continue to provide service.

Accordingly, the designation of Bisbee-Douglas as an international airport should be revoked and Douglas-Municipal should be substituted for Bisbee-Douglas on the list of airports designated for the arrival of private aircraft from areas south of the U.S. for Customs processing.

DATE: Comments must be received on or before October 27, 1986.

ADDRESS: Written comments (preferably in triplicate) may be submitted to and inspected at the Regulations Control Branch, U.S. Customs Service Headquarters, Room 2426, 1301 Constitution Avenue, NW., Washington D. C. 20229.

FOR FURTHER INFORMATION CONTACT: Thomas Hargrove, Officer of Inspection & Control (202) 566–5607.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Under § 1109(b), Federal Aviation Act of 1958, as amended (49 U.S.C. 1509(b)), the Secretary of the Treasury is authorized to designate places in the U.S. as ports of entry for civil aircraft arriving from any place outside the U.S., and for merchandise carried on the aircraft. These airports are referred to as "international airports", and the location and name of each are listed in § 6.13, Customs Regulations (19 CFR 6.13). In accordance with § 6.2, Customs Regulations (19 CFR 6.2), the first landing of every civil aircraft arriving in the U.S. must be at one of these international airports unless the aircraft has been specifically exempted from this requirement or permission to land elsewhere has been granted. Customs officers are assigned to all international airports to accept entries of merchandise, collect duties, and enforce Customs laws and regulations. If a civil aircraft desires to land at a "landing rights airport", which means an airport which has not been designated as an international airport, permission must first be obtained and Customs must assign personnel to that airport for that aircraft.

Within the Douglas, Arizona, area there are two airports: Bisbee-Douglas International Airport, which has been disignated as an "international airport", and Douglas Municipal Airport, a landing rights airport.

A review of Customs operations in the area indicates that there is a relatively low number of international aircraft arrivals at Bisbee-Douglas International Airport. Most of the arrivals are light aircraft (single/multi-engine) as opposed to jets or turbos and very few of the arrivals are locally based. It has also been learned that the Federal Aviation Administration (FAA) is planning on closing its facility at the airport. Because of the minimal use of the facility, it is not cost-effective for the FAA, Customs, or the Immigration & Naturalization Service, which share responsibility for clearing private aircraft, to continue to provide service. It has also been determined that because of the surrounding mountainous terrain; three restricted military areas to the west; and two military operations to the northeast; safety hazards exist in landing in the area. Of particular concern to Customs is the fact that the airport is located approximately 15 miles from the U.S.-Mexican border. This distance give smugglers the opportunity to engage in "touch and go" or air drop smuggling of illegal drugs and contraband. "Touch and go" smuggling involves reporting Bisbee-Douglas as the first U.S. destination but actually landing somewhere else first, quickly unloading contraband, and continuing on to Bisbee-Douglas. Air drop smuggling involves flying very low over some point between the border and Bisbee-Douglas, pushing contraband out of the aircraft to be retrieved on the ground, and continuing on to Bisbee-Douglas. Additionally, the lack of security lighting and inability to see aircraft on

touchdown makes tracking of individual aircraft very difficult. This is a further impediment to effective drug interdiction in the area. It takes 10–15 minutes after touchdown for aircraft to arrive for inspection.

Douglas Municipal Airport is located closer to the U.S.-Mexican border thus significantly reducing the distance in which aircraft can "touch and go" or engage in air drop smuggling. Further, the lighting and space available for Customs officers will allow full view of aircraft immediately on touchdown.

For all of these reasons, the designation of Bisbee-Douglas as an international airport should be revoked and Douglas Municipal should be substituted for Bisbee-Douglas on the list of airports designated for the arrival of private aircraft from areas south of the U.S. for processing.

COMMENTS

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, Customs Headquarters, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

EXECUTIVE ORDER 12291

This document does not meet the criteria for a "major rule" as specified in § 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

REGULATORY FLEXIBILITY ACT

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

DRAFTING INFORMATION

The principal author of this document was Larry L. Burton, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

LIST OF SUBJECT IN 19 CFR PART 6

Customs duties and inspection, Imports, Air Carriers, Aircraft, Airports.

PROPOSED AMENDMENTS

It is proposed to amend Part 6, Customs Regulations (19 CFR Part 6), as set forth below.

PART 6—AIR COMMERCE REGULATIONS

1. The authority citation for Part 6 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (Gen. Hdnote 11), 1624; 49 U.S.C. 1474, 1509.

2. It is proposed to amend § 6.13 by removing "Douglas, Ariz." under the column headed "Location" and "Bisbee-Douglas International Airport" under the column headed "Name".

3. It is proposed to amend § 6.14(g) by removing "Bisbee-Douglas International Airport" under the column headed "Name" and inserting, in its place, "Douglas Municipal Airport".

WILLIAM VON RABB,
Commissioner of Customs.

Approved: July 31, 1986.

FRANCIS A. KEATING II,
Assistant Secretary of the Treasury.

[Published in the Federal Register, August 26, 1986 (51 FR 30375)]

U.S. Court of Appeals for the Federal Circuit

August 15, 1986

ERRATUM

(Appeal No. 85–2806)

REPRESENTATIVE STEWART B. MCKINNEY, ET AL., APPELLANTS *v.* U.S. DEPARTMENT OF THE TREASURY, JOHN M. WALKER, JR., ASSISTANT SECRETARY OF THE TREASURY (ENFORCEMENT AND OPERATIONS); U.S. CUSTOMS SERVICE; AND WILLIAM VON RAAB, COMMISSIONER OF CUSTOMS, APPELLEES

(Decided August 8, 1986)

Please make the following corrections to Appeal No. 85–2806, published in CUSTOMS BULLETIN, Vol. 20, No. 34, dated August 27, 1986:

Page 8, line 6, delete the words "the Treasury".

Page 8, line 9, insert the word "the" before the word "Treasury".

United States Court of International Trade

One Federal Plaza

New York, N.Y. 10007

Chief Judge

Edward D. Re

Judges

Paul P. Rao
James L. Watson
Gregory W. Carman
Jane A. Restani
Dominick L. DiCarlo
Thomas J. Aquilino, Jr.
Nicholas Tsoucalas

Senior Judges

Morgan Ford

Frederick Landis

Herbert N. Maletz

Bernard Newman

Samual M. Rosenstein

Nils A. Boe

Clerk

Joseph E. Lombardi

Decisions of the United States Court of International Trade

(Slip Op. 86–82)

ZENITH RADIO CORP., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 80-5-00861

Before MALETZ, *Senior Judge.*

(Dated August 8, 1986)

OPINION AND ORDER

Frederick L. Ikenson, P.C. (Frederick L. Ikenson on the briefs) for plaintiff.
Richard K. Willard, Assistant Attorney General; *Michael F. Hertz,* Director, Commercial Litigation Branch (*Velta A. Melnbrencis* on the briefs) for defendant.

MALETZ, *Senior Judge:* The government moves for assessment of damages on a $250,000 injunction bond posted by Zenith. For the reasons that follow, the motion is denied.

I. BACKGROUND

On March 10, 1971, the Secretary of the Treasury found that televison sets from Japan were being dumped. 36 Fed. Reg. 4597 (1971). Such sets, therefore, became subject to antidumping duties. From 1971 through 1979, however, most of these duties were not collected. On March 28, 1980, the Secretary of Commerce, to whom responsibility for administering the antidumping laws has been transferred, announced an administrative review of the antidumping finding. 45 Fed. Reg. 20,511 (1980); *see* Tariff Act of 1930 § 751, 19 U.S.C. § 1675. Before the administrative review was completed, on April 28, 1980, the Secretary of Commerce settled for $77 million all claims for antidumping duties related to entries of television sets from July 1, 1973 to March 31, 1979. Zenith brought this action to challenge the lawfullness of the settlement agreement.[1] In challenging the settlement, Zenith relied on two theories: (1) the agreement was not authorized by 19 U.S.C. § 1617 and was, therefore, ultra

[1] For a detailed discussion of the background of this action, see *Zenith Radio Corp.* v. *United States,* 1 CIT 180, 509 F. Supp. 1282 (1981).

vires; and (2) the government officials who recommended and entered into the settlement acted arbitrarily, capriciously, and in bad faith.

Early in the history of this action, Zenith moved for a preliminary injunction barring government officials from implementing the terms of the settlement agreement. Finding that Zenith had "made out a substantial case on the merits on its second alternative cause of action alleging that Government officials * * * acted arbitrarily and in bad faith," *Zenith Radio Corp* v. *United States*, 1 CIT 53, 56, 505 F. Supp. 216, 219 (1980), the court granted a preliminary injunction, *id.* at 58, 505 F. Supp. at 220–21.[2] Later, the court granted the government's motion to require Zenith to post security for the injunction under rule 65(c) of this court. Although the government requested that security be set at $11.5 million,[3] the court directed Zenith to post security or a bond in the amount of $250,000 "to indemnify the defendant should it ultimately be determined that the defendent was wrongfully enjoined or restrained by the preliminary injunction issued by this court * * *." *Zenith Radio Corp.* v. *United States*, 2 CIT 8, 11, 518 F. Supp. 1347, 1350 (1981).[4]

Subsequently, our appellate court ruled that this court lacked jurisdiction to entertain an action such as Zenith's. *Montgomery Ward & Co.* v. *Zenith Radio Corp.*, 69 CCPA 96, 673 F.2d 1254, *cert. denied*, 459 U.S. 943 (1982). Prior to denial of *certiorari* in *Montgomery Ward*, this court denied the government's motion to dissolve the preliminary injunction, because government implementation of the settlement agreements would moot the controversy and prevent Supreme Court review. *Zenith Radio Corp* v. *United States*, 3 CIT 243, 244 (1982).[5] After the Supreme Court denied *certiorari*, however, this court dissolved the preliminary injunction. *Zenith Radio Corp.* v. *United States*, 4 CIT 201, 4 CIT 202 (1982). The government then moved for assessment of damages on the injunction bond.[6]

II. RULE 65(C)

Rule 65(c) of this court, in language identical to the parallel provision of the Federal Rules of Civil Procedure, provides in part: "No

[2] In this connection, the court noted that the United States Court of Appeals for the District of Columbia Circuit had issued a substantially identical injunction in a related action. The court further observed that the D.C. Circuit's injunction was certain to be dissolved imminently because of the impact of the Customs Courts Act of 1980, 28 U.S.C. § 1581, which vested in this court exclusive jurisdiction over the type of international trade action brought by Zenith. *Zenith Radio Corp.* v. *United States*, 1 CIT 53, 54–55, 505 F. Supp. 216, 218 (1980). As matters developed, this court also lacked jurisdiction over Zenith's action. *See Montgomery Ward & Co.* v. *Zenith Radio Corp.*, 69 CCPA 96, 673 F. 2d 1254, *cert. denied*, 459 U.S. 943 (1982).

[3] The government performed the following calculation to arrive at the figure of $11.5 million: the injunction delayed the government's receipt and use of the $77 million settlement; one year's interest on the figure, at 15% interest, is $11.5 million.

[4] The court considered various factors in setting security at $250,000. It found that Zenith's action had the potential of benefiting other United States television manufacturers, 2 CIT at 10, 518 F. Supp. at 1350; that Zenith might advance the public interest in faithful enforcement of the antidumping laws, *id.* at 10–11, 518 F. Supp. at 1350; and that prohibitive security would undermine the congressional goal that the government's administration of the antidumping laws be subject to judicial review, *id.* at 11, 518 F. Supp. at 1350.

[5] The court rejected the government's suggestion that the preliminary injunction should be dissolved and that Zenith should be required to seek an injunction from the court of appeals or the Supreme Court pending filing of a petition for *certiorari*, finding such a procedure wasteful. 3 CIT at 244.

[6] Between dissolution of the preliminary injunction and final submissions of the motion for assessment of damages, the parties sparred over discovery for some time. *See Zenith Radio Corp.* v. *United States*, 7 CIT 398, 588 F. Supp. 1443 (1984), *rev'd*, 764 F.2d 1577 (Fed. Cir. 1985).

restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained." The circuits do not agree unanimously on the interpretation of rule 65(c).[7]

A. *The* PAGE COMMUNICATIONS *Approach*

The District of Columbia Circuit has taken the position that even where rule 65(c) requires a bond, this does not mean that the court is required to award damages on the bond if the injunction is dissolved, because the court still must avoid inequitable results. *Page Communications Engineers, Inc.* v. *Froehlke*, 475 F.2d 994, 997 (D.C. Cir. 1973) (per curiam). Similarly, the Tenth Circuit has held that whether to award damages on an injunction bond is a question committed to the discretion of the trial court, which should weigh considerations of equity and justice. *Kansas* EX REL. *Stephan* v. *Adams*, 705 F.2d 1267, 1269 (10th Cir. 1983). *Accord H & R Block, Inc.* v. *McCaslin*, 541 F.2d 1098, 1099 (5th Cir. 1976) (per curiam) ("The awarding of damages pursuant to an injunction bond rests in the sound discretion of the court's equity jurisdiction.").

B. *The* COYNE-DELANY *Approach*

On the other hand, the Seventh Circuit has criticized *Page Communications* and *H & R Block*, holding that when a defendant sustains damages because of a wrongfully issued preliminary injunction, the plaintiff should "normally be required to pay the damages, at least up to the limit of the bond." *Coyne-Delany Co.* v. *Capital Development Board of Illinois*, 717 F.2d 385, 391 (7th Cir. 1983).[8] *Coyne-Delany* was particularly unimpressed with the reliance that *Page Communications* and *H & R Block* placed on *Russell* v. *Farley*, 105 U.S. 433, 441–42 (1882) (in absence of imperative statute to contrary, court should have power to mitigate terms imposed as condition for injunction, or to relieve from such terms altogether, whenever it appears continuation of terms would be inequitable or oppressive). The Seventh Circuit reasoned that (1) the portion of *Russell* upon which reliance was placed was dictum because in that case the injunction had not been dissolved completely, *Coyne-Delany*, 717 F.2d at 391, and (2) *Russell* was superseded by the adoption of rule 65(c), *id.*[9] In *Page Communications*, however, the D.C. Circuit

[7] Because of the identity of language between this court's rule 65(c) and the same rule of the Federal Rules of Civil Procedure, it is particularly helpful to consider precedents from other circuits. *Cf.* U.S.C.I.T. R. 1 ("The court may refer for guidance to the rules of other courts.").

[8] In *Coyne-Delany* as here, the plaintiff was "not a poor person but a substantial corporation." 717 F.2d at 392. Whereas this court required an injunction bond of $250,000, the district court in *Coyne-Delany* required a bond of only $5,000. *Id.* at 390.

[9] *Coyne-Delany* was willing to accept the possibility of good reasons for not awarding damages on an injunction bond: "objective factors—such as the resources of the parties, the defendant's efforts or lack thereof to mitigate his damages, and the outcome of the underlying suit * * *." 717 F.2d at 392. The Seventh Circuit also stated that a change in the law after issuance of the preliminary injunction may not always be a good reason for denying damages, "but it is a legitimate consideration, perhaps especially where the prevailing party is a state agency that benefited from a change in the law of its state." *Id.* at 392–93. These factors are discussed further in Part III, *infra*.

A recent student note goes further than *Coyne-Delany*:

Continued

noted that rule 65(c) did not make judgment on the bond automatic upon a showing of damages, 475 F.2d at 997, and concluded:

> [T]he [district] court in considering the matter of damages was exercising its equity powers, and was bound to effect justice between the parties, avoiding any result that would be inequitable or oppressive for either party. The Rule [65(c)] was not intended to negate the court's duty in this regard. Thus, we hold that the court had discretion to refuse to award damages, in the interest of equity and justice. This conclusion is consistent with the provision of the Rule which gives the court discretion to fix bond in a nominal amount; clearly the Rule does not contemplate that a defendent who is wrongfully enjoined will always be made whole by recovery of damages.

Id.

C. *Contrasting the Approaches*

The court finds itself in greater agreement with the approach of *Page Communications* than with that of *Coyne-Delany*. The court does not understand rule 65(c) as vitiating *Russell* v. *Farley*[10] and believes that trial courts must retain a modicum of discretion in assessing damages on injunction bonds. Inasmuch as the rule does not mandate an automatic assessment of damages—even if the wrongfully enjoined defendant sustained legitimate damages—the court must read the rule in a manner that will "secure the just, speedy, and inexpensive determination of every action," U.S.C.I.T. R. 1. *Cf. Manuli Autoadesivi, S.P.A.* v. *United States*, 9 CIT, ——, ——, 602 F. Supp. 96, 98 (1985) (intervention denied because of likelihood of prejudice to original parties, citing rule 1's direction of just, speedy, and inexpensive determinations).

While the court has expressed a preference for the approach of *Page Communications*, the tension between that case and *Coyne-Delany* might not be as great as appears at first blush. It is doubtful that the D.C. Circuit, or other circuits that follow *Page Communications*, would contest *Coyne-Delany's* assertion that damages normally should be assessed on the bond posted for a wrongfully issued injunction. And *Coyne-Delany* certainly recognizes that there are situations when damages should not be assessed. Thus, the question is one of emphasis: is the presumption that damages will be assessed overwhelming and rebuttable only in rare circumstances (*Coyne-Delany*), or do the court's equitable responsibilities mandate careful examination before assessment of damages (*Page Communications*)?

Courts should not be free to deny, in their discretion, the recovery of damages otherwise available under rule 65(c). Courts should not deny recovery only when damages are not recoverable under the general law of damages or under a just interpretation of the conditions of the bond.

Note, *Recovery for Wrongful Interlocutory Injunctions under Rule 65(c)*, 99 Harv. L. Rev. 828, 842–43 (1986). The note reads rule 65(c) as undoing *Russell* v. *Farley*, *id.* at 843, and rejects *Coyne-Delany's* list of factors that might lead to denial of recovery of damages, *id.* at 844.

[10] It is interesting that the Advisory Committee note to the 1946 amendment to Federal Rule of Civil Procedure 65 indicates that the rule prevents the court from requiring, as was possible under *Russell* v. *Farley*, 105 U.S. at 446, institution of a new action for recovery on the bond. To this extent, rule 65 overruled *Russell* by enabling the defendent to move for damages on the bond as part of the original action. Nothing in the Advisory Committee notes states, however, that rule 65(c) abrogates *Russell's* grant of equitable power to decline to assess damages.

This court finds the latter formulation more palatable but believes that in this case the government is not entitled to an assessment of damages on either construction of rule 65(c).

III. Equitable Factors

The reasons for the court's conclusion that the government is not entitled to damages are evident upon an examination of the equitable factors discussed in *Coyne-Delany* and other cases.

A. *Good Faith*

That an injunction was obtained in good faith is not enough to defeat assessment of damages. If the rule were otherwise, damages would almost never be assessed on an injunction bond, because a party seeking a preliminary injunction must demonstrate four prerequisites:

> (1) [a] threat of immediate irreparable harm; (2) that the public interest would be better served by issuing than by denying the injunction; (3) a likelihood of success on the merits; and (4) that the balance of hardship on the parties favored [the party seeking the injunction].

S.J. Stile Associates v. *Snyder*, 68 CCPA 27, 30, 646 F.2d. 522, 525 (1981); *accord Zenith Radio Corp.* v. *United States*, 1 Fed. Cir. 74, 76, 710 F.2d 806, 809 (1983). In light of these stiff requirements, a party acting in bad faith will not often obtain an injunction, unless he was capable of misleading the court on a grand scale. Nevertheless, the good faith of the party who obtained the injunction is one of the factors the court may consider. *See Coyne-Delany*, 717 F.2d at 392 (court should consider full range of factors, which might include plaintiff's good faith); *Page Communications*, 475 F.2d at 997 ("The good faith of Page cannot be doubted."). Based on its familiarity with the proceedings in this case, the court is entirely satisfied that Zenith acted in good faith when it sought injunctive relief.

B. *Resources of the Parties*

The relative resources of the parties, *see Coyne-Delany*, 717 F.2d at 392, do not tip the scales strongly in favor of or against assessment of damages. The court takes judicial notice that Zenith is hardly impecunious. But there is probably no party in the world better situated than the government of the United States to absorb the loss of $250,000 without dire consequences.

C. *Mitigation of Damages*

The court will not consider the factor of mitigation of damages, *see id.* Because the interest lost by the government on the $77 million settlement dwarfed the bond of $250,000, even a high degree of governmental lassitude would not suffice to make failure to mitigate damages significant. If the injunction damaged the government, damages—even if vigorously mitigated—would exceed

$250,000. Therefore, the government should not be penalized if it failed to mitigate damages.[11]

D. *Outcome of the Underlying Suit*

While the outcome of the underlying suit is one of the factors discussed in *Coyne-Delany*, *see id.*, it has minimal relevance to this action, which was dismissed on jurisdictional grounds. The court will neither speculate nor require a minitrial on the question of whether Zenith's allegation of bad faith in the $77 million settlement agreement had substantive merit. The court does find, however, that the allegation was not frivolous. To that extent, Zenith's failure to win the underlying suit is not a significant factor in favor of assessment of damages.[12]

E. *Change in the Law*

The most significant factor in Zenith's favor, and the one upon which the court relies in denying assessment of damages, is the change in the law that took place after the preliminary injunction was issued and thus deprived Zenith of its day in court. That change was the decision by the court of appeals in *Montgomery Ward & Co.* v. *Zenith Radio Corp.*, 69 CCPA 96, 673 F.2d 1254, *cert. denied*, 459 U.S. 943 (1982). *Montgomery Ward* held that neither of the relevant statutes—28 U.S.C. §§ 1581(c) or (i)—conferred jurisdiction on Zenith's claim of bad faith in the antidumping settlement. 69 CCPA at 104–11, 673, F.2d at 1260–65. While *Montgomery Ward* did not change the law in the sense that it overruled a prior precedent, it did decide a novel jurisdictional question in a manner contrary to what Zenith legitimately could have expected.[13]

In *Coyne-Delany*, the Seventh Circuit held that a change in the law might not always be a good ground for denying damages, but that "it is a legitimate consideration, perhaps especially when the prevailing party is a state agency that benefited from a change in the law of its state." 717 F.2d at 392–93. Here, the federal government benefited from a construction of federal law by a federal court of appeals.

A change in the law was the major reason that damages were denied in *Kansas* EX REL. *Stephan* v. *Adams*, 705 F.2d 1267 (10th Cir. 1983). The court stated:

> In our judgment the trial court did not abuse its discretion by holding that costs and expenses were not to be awarded. The record discloses that the plaintiffs raised valid environmental

[11] Because the court holds on other grounds that the government is not entitled to damages, it does not reach the merits of Zenith's alternative contentions that the government was not damaged by the injunction or that the government failed to mitigate damages.

[12] The non-frivolity of Zenith's substantive claim is a factor quite similar to Zenith's good faith, discussed previously. Neither is crucially important, and the court will not give Zenith "double credit" for bringing a good faith action that was not frivolous.

[13] In particular, 28 U.S.C. § 1581(i)(2) grants this court exclusive jurisdiction of civil actions commenced against the government that arise out of any law providing for tariffs and duties. On its face, section 1581, which became law during the pendency of this action on October 10, 1980, Pub. L. 96-417, tit. II, § 201, 94 Stat. 1728–29, seemed to offer Zenith an opportunity to press its claims in this court.

> concerns. Moreover, the restraining order was vacated not because the concerns on the part of plaintiffs-appellees were unfounded. It was the intervention of Congress that brought about the change.

Id. at 1270.

Because of the jurisdictional ruling in *Montgomery Ward*, Zenith will never have an opportunity to prove its allegation, which the court has found non-frivolous, that the $77 million settlement was tainted by bad faith. Under all the circumstances, however, it would be manifestly unfair to add a rule 65(c) insult to the jurisdictional injury. The $77 million settlement has never been vindicated on the merits. Rather, this court was held to lack jurisdiction to review the merits of the settlement. If Zenith lost the opportunity to be heard on its good faith claim of governmental impropriety, it should not be required to pay damages to the government as well.

IV. CONCLUSION

For the foregoing reasons, the government's motion, under rule 65(c) of this court, for assessment of damages on the injunction bond is denied.

(Slip Op. 86–83)

AMERICAN PERMAC, INC., AND BOEWE MASCHINENFABRIK, GMBH, PLAINTIFFS *v.* UNITED STATES, DEFENDANT

Court No. 85–1–00050

Before WATSON, *Judge.*

MEMORANDUM OPINION AND ORDER

[Plaintiffs' motion for partial judgment upon the agency record is denied.]

(Decided August 12, 1986)

Barnes, Richardson & Colburn (Rufus E. Jarman, Jr.), for the plantiffs.
Richard K. Willard, Assistant Attorney General; *David M. Cohen,* Director, Commercial Litigation Branch *(Velta A. Melnbrencis),* for defendant.

WATSON, *Judge:* This action is brought by Boewe Maschinenfabrik, GmbH ("Boewe"), a West German manufacturer of drycleaning machinery, and American Permac, Inc. ("API"), Boewe's American distributor. The plantiffs contest the final results of a periodic review of an antidumping finding, conducted by the United States Department of Commerce, International Trade Administration ("ITA") pursuant to Section 751(a) of the Tariff Act of 1930, 19 U.S.C. § 1675(a). 50 Fed. Reg. 1256 (Jan. 10, 1985). The ITA found that drycleaning machinery manufactured by Boewe and sold

in the United States between July 1, 1979 and June 30, 1980 was dumped at a weighted average margin of 30.05 percent.[1]

Plantiffs have moved for partial judgment upon the agency record, pursuant to Rule 56.1 of this court, contending that application of the ITA's January 10, 1985 determination to the entries covered by the review is barred by the four-year limitation on liquidations imposed under 19 U.S.C. § 1504(d). By that provision, any entry of merchandise not liquidated within four years after the date of entry or final withdrawal from warehouse shall be "deemed liquidated" at the amount of duty asserted at the time of entry by the importer "unless liquidation continues to be suspended as required by statute or court order." For the reasons set forth below, the court concludes that suspension of liquidation was required by statute so that § 1504(d) does not bar application of the challenged determination to the entries under review.[2]

BACKGROUND

The ITA review involved in this case arises from a 1972 antidumping finding by the Treasury Department under the Antidumping Act of 1921, 19 U.S.C. § 160 *et seq.* (1976). 37 Fed. Reg. 23715 (November 8, 1972). Because that finding remained in effect on January 1, 1980, the effective date of the Trade Agreements Act of 1979 ("1979 Act")[3], the amount of duties imposed under the finding became subject to periodic review pursuant to 19 U.S.C. § 1675(a) (1982).[4] *See* 45 Fed. Reg. 20511 (March 28, 1980).

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[1] The review covered one other West German manufacturer of dry cleaning machinery, Seco Maschinenbau, GmbH & Co., which has not contested the ITA's determination.

[2] The defendant strenuously argues that the plantiffs' failure to raise the limitation on liquidation issue at the administrative level constitutes a waiver and bars this court from considering the issue. In view of the court's holding on the merits, any nonexhaustion of administrative remedies by the plaintiffs is clearly immaterial. *See Philip Brothers, Inc.* v. *United States*, 10 CIT ——, 630 F. Supp. 1317, 1324 n. 11 (1986). In addition, the court notes that the limitation issue did not arise (because the four year period under 19 U.S.C. § 1504(d) had not elapsed as to any of the covered entries) until long after the comment period specified in the preliminary results (46 Fed. Reg. 60868, 60869) had passed. Because the ITA could have issued its final results at any time, it is unclear that plaintiffs had a definite opportunity to raise the issue. *Cf., Id.* at ——, 630 F. Supp. at 1324 (no exhaustion requirement where issue did not arise until ITA's final decision). Under the circumstances, the court finds imposition of an exhaustion requirement to be innappropriate. *See* 28 U.S.C. § 2637(d).

[3] The Trade Agreements Act of 1979 repealed the Antidumping Act of 1921 and enacted a new antidumping law as part of Title VII of the Tariff Act of 1930. Pub. L. 96–39, Title I, §§ 101, 106(a), 93 Stat. 150–189, 193 (1979). Administration of the law was simultaneously transferred from Treasury to the Commerce Department.

[4] 19 U.S.C. § 1675(a) (1982) provides, in pertinent part:

> (1) In general. At least once during each 12-month period beginning on the anniversary of the date of publication of * * * an antidumping duty order under this subtitle or a finding under the Antidumping Act, 1921, * * * the administering authority, after publication of notice of such review in the Federal Register, shall —
> * * *
> (B) review, and determine (in accordance with paragraph (2)), the amount of the antidumping duty,
> * * *
> and shall publish the results of such review, together with notice of any duty to be assessed, estimated duty to be deposited, or investigation to be resumed in the Federal Register.
> (2) Determination of antidumping duties. For the purpose of paragraph (1)(b), the administering authority shall determine—
> (A) the foreign market value and United States price of each entry of merchandise subject to the antidumping duty order and included within that determination, and
> (B) the amount, if any, by which the foreign market value of each such entry exceeds the United States price of the entry.
>
> The administering authority, without revealing confidential information, shall publish notice of the results of the determination of antidumping duties in the Federal Register, and that determination shall be the basis for the assessment of antidumping duties on entries of the merchandise included within the determination and for deposits of estimated duties.

Although not applicable in this case, the Trade and Tariff Act of 1984 amended 19 U.S.C. § 1675(a)(1) by inserting the words "if a request for such a review has been received and" immediately before "after publication of notice." Pub. L. 98–573, Title VI, § 611(a)(2)(A), 98 Stat. 3031 (1984). Hence, where applicable, the amendment eliminates mandatory annual reviews and requires review only when the ITA has received a proper request. *See* Pub. L. 98–573, § 626(b)(1), 98 Stat. 3042 (effective date); 19 C.F.R. §§ 353.53a, 355.10 (1986) (implementing regulations).

In its preliminary results, published December 14, 1981 (46 Fed. Reg. 60868), the ITA calculated the weighted average margin for the Boewe imports under review to be 65.95 percent. The high margin was due in part to the agency's denial of certain selling expense adjustments which it felt Boewe and API had not properly quantified in their questionnaire responses.

On February 8, 1982, the ITA conducted a hearing pursuant to 19 C.F.R. § 353.47. Subsequently, Boewe and API filed two submissions of additional data. The first, filed February 25, 1982, pertained to trade-in allowances in the German home market. The second, filed March 18, 1982, corrected certain errors Boewe and API had discovered in their prior submissions. The ITA initially deemed this new data to be untimely and refused to incorporate it into the final margin calculations. However, prior to issuance of a final determination, the West German Embassy contacted the Commerce Department expressing concern over certain aspects of the ITA's computations. West German representatives thereafter met with Commerce officials and requested delay in the publication of the final results to allow the West German government time to submit additional legal arguments. In January 1983, Commerce agreed to incorporate the February and March, 1982 submissions of Boewe and API in the final determination.

The ITA completed its final draft in the summer of 1983, finding a weighted average margin for Boewe entries of 31.03 percent. The proposed notice was approved on August 9, 1983 and forwarded to the Federal Register for publication on August 10. However, because the West German government sought further discussion on legal aspects of the review, the notice was recalled. Following a meeting with West German officials on August 24, 1983, the ITA decided not to publish the final results and to further review certain data. The final results which the ITA ultimately issued were signed by the Under Secretary of Commerce on January 3, 1985 and published on January 10, 1985. As noted above, the weighted average margin calculated for Boewe equipment was 30.05 percent.

DISCUSSION

"Liquidation" of an entry of merchandise is defined as the final computation by the Customs Service of all duties (including any antidumping or countervailing duties) accruing on that entry. *See generally Ambassador Division of Florsheim Shoes* v. *United States*, 748 F.2d 1560, 1562 (Fed. Cir. 1984). Under 19 U.S.C. § 1504 (1982)[5], if Customs fails to liquidate entries within specified time limits, those entries are deemed liquidated at the rate of duty, value, quantity and amount of duties asserted at the time of entry by the importer,

[5] 19 U.S.C. § 1504 was enacted in the Customs Procedural Reform and Simplification Act of 1978, as Section 504 of the Tariff Act of 1930. Pub. L. 95-410, Title II, § 209(a), 92 Stat. 902 (1978).

his consignee, or agent.[6] The general time limit on liquidation, imposed under § 1504(a), is one year from the date of entry or final withdrawal from warehouse. However, § 1504(b) permits Customs to extend that period, by providing notice to the importer, for any of the following reasons:

> (1) information needed for the proper appraisement or classification of the merchandise is not available to the appropriate customs officers;
>
> (2) liquidation is suspended as required by statute or court order; or
>
> (3) the importer, consignee, or his agent requests such extension and shows good cause therefor.

Where liquidation of an entry is "suspended", notice to the importer and any authorized agent and surety is required under § 1504(c). Finally, under § 1504(d), any entry not liquidated at the expiration of four years from the date of entry or withdrawal from warehouse is deemed liquidated at the initially asserted amount of duty "unless liquidation continues to be suspended as required by statute or court order."[7]

In this case, the ITA did not publish its review determination until over four years after the latest entry date covered by the review. Plaintiffs do not dispute that the pendency of the § 1675(a) review necessitated an extension of the liquidation period beyond the one-year deadline specified in § 1504(a). They contend, however, that there was no lawful basis for an extension or suspension beyond the four-year limit under § 1504(d). Plaintiffs assert that there was no statutory authority for a suspension beyond the limit; and since defendant failed to seek a court ordered suspension, the entries should have been deemed liquidated after four years.

Although apparently no court has addressed a challenge to an ITA review based on 19 U.S.C. § 1504(d), in *Ambassador Division of Florsheim Shoes* v. *United States, supra,* the Federal Circuit had occasion to interpret the terms of 19 U.S.C. § 1504(a) and (b) in the connection with a challenge to a periodic review of a countervailing duty determination. The court therein upheld the ITA's authority to apply the final results of its review retrospectively to entries of merchandise covered by the review. The court found that authority in the language of § 1504(b)(1) and (2), which it concluded could be invoked to extend the period within which liquidation must occur beyond the one-year limit prescribed in § 1504(a). Such an extension could be based on § 1504(b)(1), inasmuch as information concerning

[6] The Trade and Tariff Act of 1984 amended 19 U.S.C. § 1504 by substituting references to "the importer, his consignee, or agent" with the term "importer of record." Pub. L. 98-573, § 191(d).

[7] The full text of 19 U.S.C. § 1504(d) (1982) is as follows:

> Any entry of merchandise not liquidated at the expiration of four years from the applicable date specified in subsection (a) of this section, shall be deemed liquidated at the rate of duty, value, quantity, and amount of duty asserted at the time of entry by the importer, his consignee, or agent, unless liquidation continues to be suspended as required by statute or court order. When such a suspension of liquidation is removed, the entry shall be liquidated within 90 days therefrom.

liability for contervailing duties (which the court reasoned "could well be considered an item of 'classification' ") was not available to Customs officers until the ITA had completed its review. 748 F.2d at 1563. The extension could also be based on § 1504(b)(2) because the administrative review scheme established in 19 U.S.C. § 1675(a) would be frustrated unless it created an implied statutory requirement that liquidation be suspended. *Id.* at 1563–65.

Applying the *Florsheim* analysis to this case, it is equally true that the defendant could invoke § 1504(b)(1) to extend the liquidation period beyond one year, since liability for antidumping duties is no less an "item of classification" than liability for countervailing duties. However, that ground for extension is not incorporated in § 1504(d), which sets the outside limit on extensions at three extra years. Consequently, the fact that Customs officials lack information necessary to assess antidumping duties due to the ITA's failure to complete its review would not, of itself, justify extending the liquidation deadline beyond four years.

The basis for extending the liquidation period found in § 1504(b)(2)—that "liquidation is suspended as required by statute"—is also satisfied in this case. In concluding that a periodic review of a countervailing duty determination triggers an implied statutorily required suspension of liquidation, the Federal Circuit in *Florsheim* focused on the "absurd consequences" of holding otherwise. That rationale is unnecessary where, as here, the administrative review is of an antidumping finding. Because 19 U.S.C. § 1675(a)(2) expressly calls for the retrospective application of antidumping review determinations (*see ante,* note 4), suspension of liquidation during the pendency of a periodic antidumping review is unquestionably "required by statute".

As previously noted, the suspension exception in § 1504(b)(2) is also incorporated in § 1504(d) as an exception to the four-year outside limit on liquidation. Accordingly, so long as suspension of liquidation continues to be required by statute (or court order), a suspension may continue indefinitely. In this case, suspension of liquidation was required by virtue of § 1675(a)(2). Hence, the court must determine whether that suspension continued until the ITA completed its review on January 10, 1985, or whether any statutory time limit on agency action operated to terminate the suspension before that date. Plaintiffs have cited two limitations provisions in the antidumping statutes which are arguably pertinent.

The first and most obvious provision is the 12-month deadline for publication of periodic review results specified in 19 U.S.C. § 1675(a)(1). That deadline, of course, was well exceeded in this case. In *Phillip Brothers, Inc.* v. *United States,* 10 CIT ——, 630 F. Supp. 1317, 1323–24 (1986), this court rejected the contention that the statutory suspension of liquidation during a periodic review terminates when the ITA exceeds the 12-month deadline under § 1675(a)(1) so that the merchandise under review must be deemed

liquidated pursuant to § 1504(a). The court noted that statutory time limits on administrative acts have generally been viewed as directory, rather than mandatory, where the statute does not specify adverse consequences for the agency's failure to meet the time limit. *E.g., Katunich* v. *Donovan,* 8 CIT 156, 160–62, 594 F. Supp. 744, 748–50 (1984); *Alberta Gas Chemicals, Inc.* v. *United States,* 1 CIT 312, 315–16, 515 F. Supp. 780, 785 (1981). Turning specifically to § 1675(a)(1), the court stated:

> [T]here is nothing in the statute or legislative history that compels the conclusion that the implied suspension automatically terminates at the close of the twelve-month period specified in [§ 1675(a)(1)]. Thus, in this situation the court is unable to impose a penalty of deemed liquidation for the delay.

10 CIT at ——, 630 F. Supp. at 1324.

Plaintiffs have made no attempt to distinguish *Phillip Brothers* other than to point out that the claim of "deemed liquidation" was based on § 1504(a) rather than § 1504(d). That fact would seem immaterial, since neither provision directs that entries be deemed liquidated when liquidation is statutorily suspended. The only relevant question is whether the ITA's failure to meet the 12-month deadline under § 1675(a)(1) terminated the statutory suspension, and *Phillip Brothers* at least purported to hold that it did not.

One could argue, however, that although the court in *Phillip Brothers* only considered § 1504(b)(2) (i.e., liquidation is statutorily suspended) as a basis for extending the liquidation period beyond the one-year limit in § 1504(a), *Florsheim* established that an extension could also be based on § 1504(b)(1) (i.e., Customs officers lack necessary information). Hence, despite what the court said in *Phillip Brothers,* one could reach the same result by holding that the publication deadline under § 1675(a)(1) terminated the statutory suspension of liquidation, and thus the ground for extension in § 1504(b)(2), but not the ground in § 1504(b)(1) since Customs still lacked information needed to assess antidumping duties. However, because the statutory suspension would have terminated, there would be no basis for an extension past the four-year limit under § 1504(d).

One deficiency in this argument is its failure to elucidate *why* the § 1675(a)(1) deadline should extinguish the § 1504(b)(2) ground for extension but not the (b)(1) ground. If in fact the suspension of liquidation has expired, why shouldn't Customs simply assess antidumping duties in the "deemed liquidated" amount? (*See infra,* note 12). Furthermore, because nothing in the text or history of § 1675(a) shows that Congress intended to impose the penalty of deemed liquidation when a review is not completed after four years, the *reasoning* of *Phillip Brothers* would necessarily apply in this case.

It should also be emphasized that the *Phillip Brothers* holding does not leave private parties powerless to stop the ITA from exceeding the § 1675(a)(1) deadline by as long as it pleases. In the recent case of *Brock* v. *Pierce County,* —— U.S. ——, 106 S. Ct. 1834 (1986), the Supreme Court unanimously held that where the Labor Department failed to meet a comparable statutory deadline in issuing its final determination regarding misuse of CETA funds by a grant recipient, the agency did not lose its power to recover those funds. The court stated:

> We would be most reluctant to conclude that every failure of an agency to observe a procedural requirement voids subsequent agency action, especially when important public rights are at stake. When, as here, there are less drastic remedies available for failure to meet a statutory deadline, courts should not assume that Congress intended for the agency to lose its power.

—— U.S. at ——, 106 S. Ct. at 1839. One "less drastic remedy" discussed by the Court is a judicial action to enforce the statutory deadline. *Id.* at n. 7. That remedy clearly would be available to participants in ITA review proceedings where the ITA exceeds the publication deadline, by virtue of this court's jurisdiction under 28 U.S.C. § 1581(i)(4).[8] *Cf., Allen* v. *Regan,* 9 CIT ——, 607 F. Supp. 133, 134 (1985) (action under § 1581(i)(4) to compel disposition on broker's license application after four-year delay).

The only other pertinent provision invoked by plaintiffs is 19 U.S.C. § 1673e(a)(1), which imposes deadlines on the Customs Service for the assessment of antidumping duties. That provision states:

> Within 7 days after being notified by the Commission of an affirmative determination under section 1673d(b) of this title, the administering authority shall publish an antidumping duty order which—
>
> (1) directs customs officers to assess an antidumping duty equal to the amount by which the foreign market value of the merchandise exceeds the United States price of the merchandise, within 6 months after the date on which the administering authority receives satisfactory information upon which the assessment may be based, but in no event later than—
>
> (A) 12 months after the end of the annual accounting period of the manufacturer or exporter within which the merchandise is entered, or withdrawn from warehouse, for consumption, or
>
> (B) in the case of merchandise not sold prior to its importation into the United States, 12 months after the end of the annual accounting period of the manufacturer or exporter within

[8] 28 U.S.C. § 1518(i)(4) provides:

> (i) In addition to the jurisdiction conferred upon the Court of International Trade by subsections (a)-(h) of this section and subject to the exception set forth in subsection (j) of this section, the Court of International Trade shall have exclusive jurisdiction of any civil action commenced against the United States, its agencies, or its officers, that arises out of any law of the United States providing for—
>
> * * *
>
> (4) administration and enforcement with respect to the matters referred to in paragraphs (1)-(3) of this subsection and subsections (a)-(h) of this section.

> which it is sold in the United States to a person who is not the exporter of the merchandise.

The provision was enacted in the Trade Agreements Act of 1979 (about a year after the enactment of 19 U.S.C. § 1504) as part of the Tariff Act of 1930. Plaintiffs especially emphasize the following comments on § 1673e(a)(1) from the 1979 report of the Senate Finance Committee:

> *Present law.*
> * * *
>
> There are no time limits on assessments of special dumping duties under current law. However, under section 504 of the Tariff Act (19 U.S.C. 1504), liquidation of entries must generally occur within 1 year after the date of entry, with administrative extensions in certain circumstances for up to 3 years.
> * * *
>
> *Reason for the provision.*—Section 736 [of the Tariff Act of 1930 (19 U.S.C. § 1673e)] would establish time limits on the assessment of antidumping duties, require cash deposits of estimated duties upon entry, and prescribe the entries to which antidumping duties may be applied. In establishing time limits on assessments, [§ 1673e] creates an affirmative obligation on the Customs Service. Although the requirement that estimated antidumping duty deposits be made as security pending liquidation should reduce the damage which delayed assessment may cause a domestic industry, the committee intends that antidumping duties be collected expeditiously. This will reduce the uncertainty which prevails during suspension of liquidation for both the importer and the domestic industry. In light of the dismal performance of the Department of the Treasury in assessing special dumping duties in the recent past, the committee considers this time limit to be an extremely important addition to the law.

S. Rep. No. 96–249, 96th Cong., 1st Sess. 75–77 (1979).

Plaintiffs' position presumably is that the time limits on assessment under § 1673e(a)(1) have expired, which cancelled the suspension of liquidation; and that, in any event, the legislative history shows that Congress intended the 4-year limit on liquidation under 19 U.S.C. § 1504(d) to serve as the outside limit on all antidumping duty assessments.

As an initial matter, it is hardly clear that the time limits on assessment under § 1673e(a)(1) have in fact expired in this case. It could be argued that because the deadlines specified in sub-parts (A) and (B) of § 1673e(a)(1)—which clearly were exceeded—are preceded by the words "but in no event later than", Congress intended those deadlines to apply in all cases as outside limits on the assessment of antidumping duties. The context of those time limits within the

statute, however, reveals that they apply to assessments of antidumping duties consequent to the ITA's publication of an antidumping duty order. Even assuming that those time limits were intended to apply to assessments of duties on merchandise subject to a § 1675(a) periodic review, the time limits would not reasonably come into play until after the ITA has published the final results of its review. The obligation created by § 1673e(a)(1), as the above quoted legislative history underscores, is *upon the Customs Service* to collect antidumping duties "expeditiously." That obligation logically would not arise, and thus could not be breached, until the ITA has furnished Customs with the determination upon which assessments must be predicated. *See* 19 U.S.C. § 1675(a)(2).

But even were the court to assume that the deadlines on assessment in § 1673e(a)(1) properly applied despite the pendency of a periodic review, it would not follow that the consequence of exceeding those deadlines was termination of the statutory suspension of liquidation. Neither the terms of § 1673e(a)(1) nor the legislative history compels such a result. Although the Senate Finance Committee report strongly expressed the expectation that Customs comply with applicable time limits, it did not specify deemed liquidation as a penalty for noncompliance. Accordingly, under the reasoning of *Phillip Brothers*, the suspension of liquidation continued regardless of whether the assessment deadlines in § 1673e(a)(1) were exceeded. If plaintiffs felt they were prejudiced by the defendant's delay, their remedy was to bring an action to enforce the applicable statutory deadlines.

Finally, the court rejects plaintiffs' contention that the Senate report's reference to 19 U.S.C. § 1504 shows that Congress intended the four-year deadline in § 1504(d) to be outside limit on the suspension of liquidation of entries covered by a periodic review. Significantly, the report mentions § 1504 only in its description of the law in effect prior to the 1979 Act. The construction of that prior law is not before the court[9] because the provisions of the 1979 Act govern assessments on all entries covered by this review. Indeed, because the effective dates of § 1504 and the 1979 Act operate to overlap[10], apparently no case will ever arise in which the assessment of dumping duties is governed by pre-1979 Act law (i.e., the Antidumping Act of 1921) as well as by the time limits on liquidation imposed

[9] The legislative history of 19 U.S.C. § 1504 makes no specific mention of the provision's impact on antidumping duty assessments. *See* S. Rep. No. 95–778, 95th Cong., 2d Sess. 4, 31–32 (1978); H.R. Rep. No. 95–621, 95th Cong., 1st Sess. 24–26 (1977). The House report gives only one example of a statutorily required suspension of liquidation, in connection with § 1504(b)(2), namely where "evidence that merchandise subject to an 'actual use' provision was in fact used for that prescribed purpose may be filed, pursuant to statute, up to three years after entry". *Id.*, at 25. *See* General Interpretive Rule 10(e), Tariff Schedules of the United States.

The Senate report, on the other hand, offers no explanation of the specific grounds for extending the liquidation period, but states generally that § 1504 would eliminate "unanticipated requests by Customs, many years after importation, for additional duties which often result in substantial losses to importers because they were unable to anticipate such duties when pricing their products." S. Rep. No. 95–778, at 4.

[10] 19 U.S.C. § 1504 applies to merchandise entered or withdrawn for consumption at least 180 days after the enactment date, October 3, 1978. Pub. L. 95–410, Title II, § 209(b), 92 Stat. 903 (1978). The provisions of the 1979 Act, on the other hand, apply to "the assessment of, or failure to assess, any countervailing duty or antidumping duty if the assessment is made after [January 1, 1980]." Pub. L. 96–39, Title X, § 1002(b)(3), 93 Stat. 307 (1979). The ITA indicated in the notice of its intent to conduct administrative reviews of Treasury antidumping findings, published March 28, 1980, that in each case the first review would cover "all entries with dates of purchase or export, as appropriate, occurring subsequent to the period covered by the last published master list, or, as a minimum, the last 12-month period." 45 Fed. Reg. at 20512.

under § 1504. At any rate, although it seems reasonable to read the Senate report as indicating that § 1504(d) *would have* imposed an outside deadline of four years on special dumping duty assessments under the Antidumping Act of 1921 (had it not been repealed), it does not follow that § 1504(d) imposes the same deadline on assessments under the current antidumping law. In addition to the considerations discussed above, a comparison of the assessment and review procedures under prior law with those established in the 1979 Act persuades the court that Congress intended the suspension of liquidation required during § 1675 reviews to override the "deemed liquidated" provisions of § 1504.

The Antidumping Act did not provide for special duty assessments pursuant to periodic administrative reviews. Rather, Customs officers assessed duties upon entries subject to a prior Treasury finding by conducting and comparing appraisals of the foreign market value and the purchase price or exporter's sales price for specific entries. 19 U.S.C. § 168 (1976). Importers could challenge antidumping findings and assessments of special dumping duties only by means of the protest procedures applicable to challenges or ordinary duty assessments. 19 U.S.C. § 169 (1976). Thus, an importer was required to wait until an entry was liquidated and then file a protest pursuant to 19 U.S.C. § 1514 (1976). If the protest was denied as provided in 19 U.S.C. § 1515 (1976), the importer could challenge that denial in an action in the Customs Court pursuant to 28 U.S.C. § 1582(a) (1976).[11]

If the Antidumping Act had not been repealed shortly after 19 U.S.C. § 1504 took effect, then entries subject to an antidumping finding which were not liquidated within four years presumably would have been "deemed" liquidated" at the amount of duties asserted at the time of entry by the importer, in accordance with § 1504(d).[12] Under the Antidumping Act, Treasury usually required the importer to post a bond pending liquidation of entries subject to an antidumping finding covering the amount of estimated special dumping duties, pursuant to 19 U.S.C. § 1623 (1976). *See* S. Rep. No. 96–249, at 75. Hence, if such entries were "deemed liquidated", the dumping duties assessed would have been the amount of the bond covering estimated dumping duties on those entries. Thereafter, if the importer felt that the amount was excessive or that dumping duties should not have been assessed, he could challenge the assessment by filing a protest. Customs officers would then have up to

[11] Under pre-1979 Act law, parties representing domestic interests had a right of action only to challenge either the nonassessment of dumping duties or a negative antidumping determination, following procedures prescribed in 19 U.S.C. § 1516 (1976).

[12] The amount of duties "asserted at the time of entry by the importer", within the meaning of § 1504(a) and (d), is not what the importer *desires* to assert upon entry, but what the importer is *required by Customs officers* to assert when filing the entry summary. *See* 19 C.F.R. §§ 159.11(a) and 159.12(f); *Detroit Zoological Society* v. *United States*, 10 CIT —, 630 F. Supp. 1350, 1355 n. 9 (1986).

two years to review the protest (during which time they undoubtedly would conduct a proper appraisal of the merchandise). If the protest was denied, in whole or in part, the importer would be entitled to a trial *de novo* in the Customs Court.

In short, importer challenges to assessments on "deemed liquidated" entries under the Antidumping Act would have, fairly and straightforwardly, involved the same procedures used for challenges to dumping duty assessments on appraised entries and for challenges to normal customs duty assessments.

Under the 1979 Act, by contrast, antidumping duties are assessed upon entries subject to a prior order or finding based upon the results of periodic agency reviews. 19 U.S.C. § 1675(a) (1982). As discussed above, the retroactive effect of such reviews requires that liquidation of the covered entries be suspended while the review is pending.

In addition, the use of protest procedures for importer challenges to administrative determinations and special duty assessments under the Antidumping Act has been eliminated. The 1979 Act establishes a uniform procedure in which any "interested party" who has participated in an administrative proceeding (such as a periodic review by the ITA) may directly challenge the agency's final determination by bringing an action for review upon the agency record in the Court of International Trade. 19 U.S.C. §§ 1514(b), 1516a (1982); 28 U.S.C. § 1581(c) (1982). In explaining this new review procedure under the 1979 Act, the Senate Finance Committee stated:

> Subsection (a) of new [19 U.S.C. § 1516a] provides a list of the types of antidumping and countervailing determinations which will now be reviewable. This increase in the number of determinations subject to judicial review in the Customs Court is intended to provide greater procedural safeguards than exist under current law and to expedite the obtaining of judicial relief * * *
>
> Under current law, no suit can be instituted by an importer or by an American manufacturer, producer, or wholesaler under [19 U.S.C. § 1516(a)–(c) (1976)] until at least one entry has been liquidated. This requirement that at least one entry be liquidated can result in the denial of effective relief in some instances * * *
>
> Under [19 U.S.C. § 1516a] any person with standing in an antidumping or countervailing duty case can challenge a determination in the Customs Court within 30 days of notice of the determination. There is no need for administrative review by the authority or the Commission * * * The bill thus represents a significant improvement over present law both in terms of shortening the overall review process and eliminating the disparity in review procedures provided to importers and domestic interested parties * * *
>
> *For importers, this fact will result in a significant change of procedure.* Under current law, an importer may challenge the imposition of a countervailing or antidumping duty only with

> respect to those entries of his which have been assessed with a duty of this nature. *Pursuant to [§ 1516a], the importer's right to challenge the assessment of a countervailing and antidumping duty is contained exclusively in [§ 1516a] and the importer will be required to challenge the assessment of an antidumping or countervailing duty when the final finding or order is published or when periodic announcement of the amount to be assessed is published pursuant to [19 U.S.C. § 1675].*

S. Rep. No. 96–249, at 250–51 (1979) (emphasis added). The plain implication of these comments is that Congress eliminated the use of protests and made § 1516a challenges to agency determinations the exclusive remedy for parties wishing to contest the basis of antidumping duty assessments, not because it wished to curtail the availability of judicial review of those assessments, but because it contemplated that antidumping duties would be assessed *only* pursuant to reviewable agency determinations.

Because present law mandates that importers deposit estimated antidumping duties on entries subject to an antidumping duty order, *see* 19 U.S.C. § 1673e(a)(3), if entries under periodic review could be "deemed liquidated", as plaintiffs contend, antidumping duty assessments on those entries would be in the amount of the deposits. The question then would arise: how might a party who is dissatisfied with the amount of such assessments go about challenging them? Because the assessments would not stem from a new agency determination, they could not be challenged in a § 1516a action and this court would not have jurisdiction under 28 U.S.C. § 1581(c).

Arguably, perhaps, a "constructive determination" could be recognized, consisting of the previous final determination (upon which the required deposits were based) as applied to those entries deemed liquidated. It is unclear, however, when the limitation period for filing such an action would commence (since no determination was "published"), or what the "agency record" would consist of. Perhaps jurisdiction could be found under 28 U.S.C. § 1581(i)(4), but the parameters of such an action would also be uncertain. The complexity of the situation would be compounded if the ITA were to publish the results of its review after a *portion,* but not all, of the covered entries were "deemed liquidated" at the amount of estimated duty deposits. Finally, because the ITA must reply on current information for a review determination to be lawful, *see Freeport Minerals* v. *United States,* 776 F.2d 1029 (Fed. Cir. 1985); *Timken Co.* v. *United States,* 10 CIT ——, 630 F. Supp. 1327, 1332–34 (1986), any recognized action challenging the basis of dumping assessments on entries deemed liquidated would necessarily result in a remand to the ITA for a determination using data attributable to those entries. Hence, the end result would be no different than if the suspension of liquidation had continued until the ITA completed its review. Although the court could impose time limits upon the ITA for compliance with the order of remand, the same degree of judicial control

could sooner be obtained in an action to enforce the statutory deadlines, discussed previously.[13]

The court has engaged in the above speculation merely to demonstrate that plaintiffs' reading of the new law in relation to § 1504, if not "absurd", is at least "highly implausible". The court cannot believe that Congress tacitly envisioned such a construction. The "deemed liquidated" penalty of § 1504 operates irrationally, and if applied in an antidumping context could lead to particularly inequitable assessments, since the amount of deposited duties may bear little relation to actual dumping margins.[14] In that situation it would seem especially critical that parties be guaranteed an adequate means to challenge the basis of the assessments. The scheme for judicial review of agency determinations under the new law, if applicable at all, is ill-suited to that purpose. Congress' failure to address its difficulty, coupled with its clearly expressed expectation that periodic review determinations would provide the basis for antidumping duty assessments on covered entries, persuades the court that Congress intended the statutory suspension of liquidation during a periodic review to override the possibility of deemed liquidation under § 1504(d).

The court, of course, does not condone the ITA's failure to meet its statutory time limits. However, the availability of an action to enforce those time limits accords adequate protection to parties who are truly aggrieved by undue agency delays.

Because the court holds that the statutorily required suspension of liquidation continued until the ITA published the final results of its review, it is ORDERED that plaintiffs' motion for partial judgment upon the agency record is hereby denied.

[13] Congress facilitated this court's ability to enforce such deadlines with the grant of full equitable powers in the Customs Court Act of 1980. *See* 28 U.S.C. §§ 1585, 2643(c)(1) (1982).

[14] It is unclear from the record whether Customs required deposits of estimated dumping duties on all or any of the entries covered in this review, but the court presumes that plaintiffs would escape considerable potential liability if the entries were deemed liquidated. *See* Defendant's brief, at 41–42. The resulting windfall to plaintiffs would penalize not only the defendant, by depriving it of revenues, but also plaintiffs' domestic competitors (who played no part in the defendant's delay), by depriving them of the protection of the antidumping law. The inequity in this case would be especially egregious, since the ITA's delay was occasioned principally to facilitate the late intervention of the West German government on plaintiffs' behalf. It is doubtful that plaintiffs actually felt prejudiced by this delay which, indeed, resulted in substantial reductions in the ITA's margin calculations.

Of course, "deemed liquidation" could equally operate to unfairly penalize an importer, if the assessed deposits of estimated duties were greater than actual dumping margins.

(Slip Op. 86–84)

MATSUSHITA ELECTRIC INDUSTRIAL CO., LTD.; MATSUSHITA ELECTRIC CORP. OF AMERICA; PANASONIC HAWAII, INC.; MATSUSHITA ELECTRIC OF PUERTO RICO, INC.; VICTOR CO. OF JAPAN, LTD.; AND US JVC CORP., PLAINTIFFS *v.* UNITED STATES, THE DEPARTMENT OF COMMERCE; MALCOLM T. BALDRIDGE, SECRETARY OF COMMERCE; BRUCE SMART, UNDER SECRETARY OF COMMERCE FOR INTERNATIONAL TRADE; PAUL FREEDENBERG, ASSISTANT SECRETARY OF COMMERCE FOR TRADE ADMINISTRATION; GILBERT B. KAPLAN, DEPUTY ASSISTANT SECRETARY OF COMMERCE FOR IMPORT ADMINISTRATION, DEFENDANTS

Court No. 86–07–00902

MEMORANDUM OPINION AND ORDER

RAO, *Judge:* This civil action is before the Court on plaintiffs' application, brought on by an order to show cause, for a preliminary injunction. Plaintiffs seek to enjoin the Commerce Department (Commerce) from conducting any administrative reviews of T.D. 71–76, the dumping finding covering television receiving sets, monochrome and color, from Japan, as to such merchandise produced by plaintiffs, for periods after August 18, 1983, unless and until it is determined that final revocation of T.D. 71–76 as to plaintiffs is not warranted.

Plaintiffs also seek to require Commerce to conduct and complete administrative reviews under T.D. 71–76 as to their merchandise for the periods April 1, 1981 to March 31, 1982, April 1, 1982 to March 31, 1983 and April 1, 1983 to August 18, 1983 and to require Commerce to employ the "traditional methodology" for determining whether dumping margins exist. Plaintiffs seek to compel Commerce to determine, based on these reviews, whether final revocation of T.D. 71–76 as to plaintiffs is warranted.

Defendants oppose the motion for a preliminary injunction and have moved to dismiss the action for lack of jurisdiction and failure to state a claim upon which relief can be granted, or alternatively, for summary judgment. Defendants also move for a stay of discovery and for a protective order relieving them of the obligation to respond to discovery requests, including a request for documents and notices of deposition for six Commerce Department officials.

It is defendants' position that plaintiffs' motion for a preliminary injunction is not supported by sufficient facts that show that plaintiffs are likely to be immediately and irreparably harmed in the absence of an injunction, that they have not made the requisite showing that they are likely to prevail on the merits of their claim or that the balance of hardships or the public interest favors the grant of the preliminary injunction.

The Court will decide only the question of whether the preliminary injunction should issue, since the Rules of this Court provide for response time for the other pending motions.

FINDINGS OF FACTS

T.D. 71–76, promulgated in March, 1971 and later modified by T.D. 75–40, is a dumping finding with respect to television receivers from Japan. On April 28, 1980 plaintiffs entered into a settlement agreement with the United States respecting their potential liability for dumping duties assessed pursuant to T.D. 71–76 on entries of color television receivers imported from Japan through March 31, 1979.

Since that time, the administration of the antidumping laws of the United States devolved to Commerce and Commerce was required by statute to perform annual reviews of antidumping duty orders. Commerce performed two such annual reviews with respect to television sets from Japan and found no dumping of the involved merchandise by Matsushita and only *de minimus* dumping margins with respect to Victor Company of Japan (VCJ). Pursuant to 19 U.S.C. § 1675(c) plaintiffs then applied for a revocation of T.D. 71–76 as to their merchandise, based on the two year, no dumping findings of the first and second annual reviews. Commerce issued a tentative revocation of T.D. 71–76 as to plaintiffs' merchandise on August 18, 1983, published in the Federal Register at 48 Fed. Reg. 37508 (1983). Since that time defendants have made no further determinations with respect to plaintiffs' color television sets, despite plaintiffs' submissions at a hearing in December, 1983 which plaintiffs allege demonstrated no likelihood of the resumption of sales at less than fair value.

Commerce admits that it has delayed in initiating and completing the annual administrative reviews mandated by the statute and that it has not made any final determinations in its third, fourth, partial fifth, full fifth, sixth or seventh reviews. It does not offer any explanation as to the reason that a final determination respecting plaintiff's application for revocation of T.D. 71–76 has not been made. This despite the language of Commerce's own regulation, 19 C.F.R. 353.54(f) to the effect that "[a]s soon as possible after publication of a 'Notice of Tentative Determination to Revoke or Terminate', the Secretary will determine whether final revocation or termination is warranted. * * *"

Commerce relies on *Freeport Minerals Co.* v. *United States*, 776 F.2d 1029 (Fed. Cir. 1985) for support of its position that if the data supporting the revocation application have become stale, Commerce may not lawfully revoke an antidumping duty order or finding. Commerce also defends its intended use of a new methodology by explaining that plaintiffs have not been injured by such use since it has not yet been implemented.

Based on the above facts, the Court grants the preliminary injunction to the following extent:

[1] The Court preliminary enjoins defendants from conducting any administrative reviews under T.D. 71–76 as to these plaintiffs until it has made a final determination as to the final revocation of T.D. 71–76 with respect to plaintiffs' products covered by that order. The plaintiffs have demonstrated that they have acted promptly in supplying Commerce with all the data requested and that they have attempted to adhere to pricing formulae which would not put them within the ambit of T.D. 71–76 and which would keep them in compliance with the terms of the settlement agreement. Commerce, in that agreement, provided that it would "promptly revoke or modify T.D. 71–76 as soon as circumstances warrant such revocation or modification in accordance with procedures set forth in * * * applicable regulations * * *" Considering that Commerce has given no reason for the delay in making a final determination as to whether to revoke T.D. 71–76 as to plaintiffs' television sets, this Court finds that the plaintiffs would be irreparably harmed by having to comply with Commerce's demands for data and verification of those data for years beyond those involved in the revocation determination decision. The compilation of data and its verification requires an expenditure of effort in both human and other resources for which plaintiffs will not be recompensed should it be found that plaintiffs have not been dumping and that T.D. 71–76 is revoked as to them.

Without deciding the final issues in the case in this preliminary proceeding and considering that defendants have not yet filed their answer to the complaint, it is the opinion of this Court that a prima facie case can be made out on the allegations in the complaint and the affidavits that have been filed in support of plaintiffs' motions. Additionally, defendants have not adduced a reasonable ground for not acting on plaintiffs' application for revocation of the dumping order as to them. See *Chevron Standard Limited and Chevron Chemical Co.* v. *United States*, 563 F. Supp. 1381, 5 C.I.T. 178 (1983).

If the preliminary injunction does not issue, plaintiffs will be required to provide a large amount of information and verify it for years beyond August 18, 1983, both irrelevant activities if T.D. 71–76 was revoked as to their merchandise. If Commerce is enjoined from including plaintiffs' television imports in any administrative review conducted for years *after* those required for a determination pertaining to revocation of T.D. 71–76 as to plaintiffs and it is later determined that T.D. 71–76 should *not* be revoked as to plaintiffs, it can then determine whether plaintiffs fall within the purview of the dumping order for those years. Whereas plaintiffs would be required to provide a large amount of information and provide for its verification if the preliminary injunction does not issue, defendants are merely being required to refrain from activity without losing any advantage if the preliminary injunction issues. The balance of hardships thus favors the plaintiffs.

The public interest will also be served if the motion for the preliminary injunction is granted. The public interest is best served when a government agency expends its resources to perform its duties in a timely and expeditious manner, considering only relevant data. If it should be determined that T.D. 71–76 should be revoked as to plaintiffs any additional review which Commerce would make as to entries subsequent to the revocation would be an unwarranted utilization of agency resources.

The Court also decides that, since there can be no change in the information available for entries of plaintiffs' color television sets for the periods April 1, 1981 to March 31, 1982, April 1, 1982 to March 31, 1982 and April 1, 1983 to August 18, 1983, that Commerce cannot logically request new (not "stale") information for those years. Nor can plaintiffs logically be expected to have maintained their records for those years based on Commerce's new accounting procedures. Commerce must examine the information and verify it using accounting procedures that were agreed to during these time periods.

Defendants motion to dissolve the temporary restraining order is denied as mooted by this Order.

The Court reserves all other matters and motions now pending in this case.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION
V86/219	Watson, J. August 7, 1986	Nanasi Co.	R67/18931	Export value
V86/220	Watson, J. August 12, 1986	Bloomfield Industries	R63/8627	Export value
V86/221	Watson, J. August 12, 1986	Bunge Corp.	290982A, etc.	Export value
V86/222	Watson, J. August 12, 1986	Craig Panorama, Inc.	R65/10600, etc.	Export value
V86/223	Watson, J. August 12, 1986	Domast Inc.	R61/13740, etc.	Export value
V86/224	Watson, J. August 12, 1986	John L. Westland & Son, Inc.	R60/11868, etc.	Export value

VALUATION DECISIONS

OF ION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
	F.o.b. unit prices plus 20% of difference between f.o.b. unit prices and appraised values	Agreed statement of facts	New York Transistor radios, together with their accessories and parts; an entirety
	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Knives
	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Rugs
	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	Los Angeles Transistor radios, together with their accessories and parts; an entirety
	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	Boston Transistor radios, together with their accessories and parts; an entirety
	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	Los Angeles Transistor radios, together with their accessories and parts; an entirety

V86/225	Watson, J. August 12, 1986	Durlacher & Co.	282681A, etc.	Export value	F.o. 2 f. a
V86/226	Watson, J. August 12, 1986	Kayten Trading Co.	R59/17461, etc.	Export value	Ap 7
V86/227	Watson, J. August 12, 1986	Karl Schroff & Assoc.	R63/7275, etc.	Export value	F.o. d p
V86/228	Watson, J. August 12, 1986	Mitsui & Co.	R62/15617, etc.	Export value	Ap th
V86/229	Watson, J. August 12, 1986	National Silver Co.	R63/5030	Export value	Ap 7
V86/230	Watson, J. August 12, 1986	National Silver Co.	R64/23489, etc.	Export value	Ap 7
V86/231	Watson, J. August 12, 1986	National Silver Co.	R65/18869	Export value	Ap 7
V86/232	Watson, J. August 12, 1986	National Silver Co.	R69/25	Export value	Ap 7
V86/233	Watson, J. August 12, 1986	Nichimen Co.	R58/22077, etc.	Export value	Ap th
V86/234	Watson, J. August 12, 1986	Nichimen Co.	R59/683, etc.	Export value	Ap th
V86/235	Watson, J. August 12, 1986	Rugby Int'l Corp.	R66/22046	Export value	Ap th
V86/236	Watson, J. August 12, 1986	Rugby Int'l Corp.	R67/14258	Export value	F.o. 2 f. a
V86/237	Watson, J. August 12, 1986	Suncoast Merchandise Corp.	R59/9198	Export value	F.o. 2 f. a
V86/238	Watson, J. August 12, 1986	Triumph Import & Export Co.	R58/161, etc.	Export value	Ap th

F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Silk scarfs
Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	Los Angeles Transistor radios, together with their accessories and parts; an entirety
F.o.b. unit prices plus 20% of difference between f.o.b. unit prices and appraised values	Agreed statement of facts	New York Transistor radios, together with their accessories and parts;
Appraised values less 7.5% thereof	Agreed statement of facts	New York Sewing machine parts
Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	Los Angeles Flatware
Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	Los Angeles Flatware
Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	Los Angeles Flatware
Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	Los Angeles Flatware
Appraised values less 7.5% thereof	Agreed statement of facts	New York Fabric
Appraised values less 7.5% thereof	Agreed statement of facts	New York Fabric
Appraised values less 7.5% thereof	Agreed statement of facts	Houston Tube mats
F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Philadelphia Tube mats
F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Los Angeles Folding opera glasses
Appraised values less 7.5% thereof	Agreed statement of facts	Chicago Binoculars

ABSTRACTED VALUATION DE

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	
V86/239	Watson, J. August 12, 1986	Waller Corp.	R65/2543, etc.	Export value	App 7.
V86/240	Newman, S.J. August 13, 1986	The DeLaval Separator Co.	80-10-01682	Export value	Inv pe co en
V86/241	Re, C.J. August 18, 1986	Korvettes	73-7-01849	Export value	App cu
V86/242	Re, C.J. August 18, 1986	M. Pressner Co.	73-3-00642	Export value	App cu

N DECISIONS — Continued

	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	Chicago Transistor radios, together with their accessories and parts; an entirety
	Invoice unit values, net packed, shown on the commercial invoices with the entry papers	Agreed statement of facts	Buffalo Not stated
	Appraised values to reflect currency revaluation	Agreed statement of facts	New York not stated
	Appraised values to reflect currency revaluation	Agreed statement of facts	Newark Not stated

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED
				Item No. and rate
C86/150	Restani, J. August 11, 1986	Algoma Tube Corp.	83-9-01348	Item 610.42 or 610.43 7.5% or 11% plus additional duties on alloy content
C86/151	Restani, J. August 11, 1986	Algoma Tube Corp.	84-2-00188	Item 610.42 or 610.43 7.5% or 11% plus additional duties on alloy content
C86/152	Restani, J. August 11, 1986	Algoma Tube Corp.	84-5-00654	Item 610.42 or 610.43 7.5% or 11% plus additional duties on alloy content
C86/153	Restani, J. August 11, 1986	Algoma Tube Corp.	84-6-00776	Item 610.42 or 610.43 7.5%, 7%, 11% or 9.4%
C86/154	Restani, J. August 11, 1986	Algoma Tube Corp.	84-6-00844	Item 610.42 or 610.43 7.5%, 7%. 11%. or 9.4% plus additional duties on alloy content
C86/155	Restani, J. August 11, 1986	Algoma Tube Corp.	84-9-01293	Item 610.42 or 610.43 7.5% or 11%

SIFICATION DECISIONS

ED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
d rate	Item No. and rate		
610.43 % plus uties tent	Item 610.39 or 610.40 Various rates	Algoma Tube Corp. v. U.S., S.O. 85–89	Sault Ste. Marie Quenched and tempered seamless alloy and non-alloy steel plain-end oilwell casings
610.43 % plus uties tent	Item 610.39 or 610.40 Various rates	Algoma Tube Corp. v. U.S., S.O. 85–89	Sault Ste. Marie Quenched and tempered seamless alloy and non-alloy steel plain-end oilwell casings
610.43 % plus uties tent	Item 610.39 or 610.40 Various rates	Algoma Tube Corp. v. U.S., S.O. 85–89	Sault Ste. Marie Quenched and tempered seamless alloy and non-alloy steel plain-end oilwell casings
610.43 1% or	Item 610.39 or 610.40 Various rates	Algoma Tube Corp. v. U.S., S.O. 85–89	Sault Ste. Marie Quenched and tempered seamless alloy and non-alloy steel plain-end oilwell casings
610.43 1%. or uties tent	Item 610.39 or 610.40 Various rates	Algoma Tube Corp. v. U.S., S.O. 85–89	Sault Ste. Marie Quenched and tempered seamless alloy and non-alloy steel plain-end oilwell casings
610.43 %	Item 610.39 or 610.40 Various rates	Algoma Tube Corp. v. U.S., S.O. 85–89	Sault Ste. Marie Quenched and tempered seamless alloy and non-alloy steel plain-end oilwell casings

ABSTRACTED CLASSIFICATION DE

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	
				Item No. and rate	It
C86/156	Restani, J. August 11, 1986	Algoma Tube Corp.	85–3–00350	Item 610.42 or 610.43 7.5% or 11%	Item V
C86/157	Restani, J. August 11, 1986	Algoma Tube Corp.	85–9–01251	Item 610.42 or 610.43 7.5%, 6.5%, 11% or 7.8%	Item V
C86/158	Newman, S.J. August 13, 1986	Dubton House, Inc.	85–12–01737	Item 254.4620 3.5%	Item Fr

ON DECISIONS — Continued

	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
e	Item No. and rate		
.43	Item 610.39 or 610.40 Various rates	Algoma Tube Corp. v. U.S., S.O. 85–89	Sault Ste. Marie Quenched and tempered seamless alloy and non-alloy steel plain-end oilwell casings
.43	Item 610.39 or 610.40 Various rates	Algoma Tube Corp. v. U.S., S.O. 85–89	Sault Ste. Marie Quenched and tempered seamless alloy and non-alloy steel plain-end oilwell casings
	Item 252.6745 Free of duty	Agreed statement of facts	Baltimore Publipress 60 gam printing paper

NOTICE OF AMENDMENTS TO THE RULES OF THE UNITED STATES COURT OF INTERNATIONAL TRADE

The court, on July 21, 1986, approved certain amendments to the Rules of the United States Court of International Trade, which are to become effective October 1, 1986. The Rules affected by these changes are: Rules 3, 4, 47, 48, 60, 62, 67, 75, 77.1, 89 and Form 3.

Copies of the amendments have been transmitted to the following sources for publication:

U.S. Customs Service
Bureau of National Affairs, Inc.
Clark-Boardman Co.
Invictus Publishing Corp.
The Lawyers Co-operative Publishing Co.
LEXIS Federal Databases
Matthew Bender & Co.
Oceana Publications, Inc.
Rules Service Co.
Shepard's/McGraw-Hill
West Publishing Co.

If you have a copy of the Rules from a commercial publisher, you may wish to communicate with that publisher to determine when the amendments will be available.

Copies of the amendments are available for examination in the court's Library and Case Management Section.

August 20, 1986.

JOSEPH E. LOMBARDI,
Clerk of the Court.

United States Court of International Trade

Amendments to Rules 3, 4, 47, 48, 60, 62, 67, 75, 89 and Form 3

New Rule 77.1

July 21, 1986

Effective date:
October 1, 1986

United States Court of International Trade

Chief Judge
Edward D. Re

Judges
Paul P. Rao
~~[Morgan Ford]~~
James L. Watson
Gregory W. Carman
Jane A. Restani
Dominick L. DiCarlo
Thomas J. Aquilino, Jr.
Nicholas Tsoucalas

Senior Judges
Morgan Ford
Frederick Landis
Herbert N. Maletz
Bernard Newman
Samuel M. Rosenstein
Nils A. Boe

Rules of the United States Court of International Trade

EFFECTIVE NOVEMBER 1, 1980
(AS AMENDED, [~~JANUARY 1, 1983~~] OCTOBER 1, 1986)

Amendments to Rule 3

Rule 3 is amended as follows:

Rule 3. Commencement of Action

(a) *Commencement.* * * *

(1) * * *

(2) An action described in 28 U.S.C. § 1581(c) to contest a determination listed in section 516A(a)(2) or (3) of the Tariff Act of 1930.*

(b) *Filing Fee—Information Statement.* * * *

(c) *Complaint Fee.* * * *

(d) *Amendment of Summons.* * * *

(e) *Notice to Interested Parties.* * * *

(f) *Precedence of Action.* * * *

Unless the court, upon motion for good cause or upon its own initiative, determines otherwise in a particular action, the following actions shall be given precedence, in the following order, over other actions pending before the court, and expedited in every way:

(1) An action seeking temporary or preliminary injunctive relief;

(2) An action involivng the exclusion of perishable merchandise or the redelivery of such merchandise;

(3) An action described in 28 U.S.C. § 1581(c) to contest a determination under section 516A of the Tariff Act of 1930;

(4) An action described in 28 U.S.C. § 1581(a) to contest the denial of a protest, in whole or in part, under section 515 of the Tariff Act of 1930, involving the exclusion or redelivery of merchandise;

(5) An action described in 28 U.S.C. § 1581(b) to contest a decision of the Secretary of the Treasury under section 516 of the Tariff Act of 1930.

PRACTICE COMMENT: * * *

*As provided in section 516A(a)(2) of the Tariff Act of 1930, a complaint shall be filed within 30 days after the filing of the summons.

PRACTICE COMMENT: * * *
PRACTICE COMMENT: * * *
PRACTICE COMMENT: * * *

(As amended, July 21, 1986, eff. Oct. 1, 1986.)

Amendments to Rule 4

Rule 4 is amended as follows:

Rule 4. Service of Summons and Complaint

(a) *Summons—Service by the Clerk.* * * *

(1) * * *

(2) * * *

(3) * * *

(4) When the action is described in 28 U.S.C. § 1581(c) and contests a determination listed in section 516A(a)(2) **or (3)** of the Tariff Act of 1930, the clerk shall, in addition to the service prescribed in paragraph (1) of this subdivision (a), also mail a copy of the summons: to the Secretary, United States International Trade Commission, when a determination of that Commission is contested; and to the General Counsel, Department of Commerce, when a determination of that Department is contested.

(5) * * *

(b) *Summons and Complaint—Service by Plaintiff.* * * *

(c) *Service.* * * *

(1) * * *

(2) * * *

(d) *Summons and Complaint—Person To Be Served.* * * *

(1) * * *

(2) * * *

(3) * * *

(4) * * *

(5) * * *

(6) * * *

(e) *Return.* * * *

(f) *Amendment of Proof of Service.* * * *

(g) *Alternative Provisions for Service in a Foreign Country.* * * *

(1) * * *

(2) * * *

(h) *Summons and Complaint—Time Limit for Service.* * * *

PRACTICE COMMENT: The clerk is authorized by Rule 4(a) to make service of the summons only in those actions commenced by a summons, i.e., actions described in 28 U.S.C. § 1581(a) or (b), and only those actions described in 28 U.S.C. § 1581(c) which contest a determination listed in section 516A(a)(2) **or (3)** of the Tariff Act of 1930. In all other actions, including those actions described in 28 U.S.C. § 1581(c) which contest a determination listed in section

516A(a)(1) of the Tariff Act of 1930, the plaintiff is required by Rule 4(b) to effect concurrent service of the summons and complaint.

PRACTICE COMMENT. * * *

(As amended, eff. Jan. 1, 1985; **July 21, 1986, eff. Oct. 1, 1986.**)

Amendments to Rule 47

Rule 47 is amended as follows:

Rule 47. Jurors

(a) ***Number of Jurors.*** **A jury shall consist of six persons, unless a greater number is specified in the local rules of the district court for the judicial district in which the case is to be tried.**

[~~(a)~~**]** **(b)** *Examination of Jurors.* * * *

[~~(b)~~**]** **(c)** *Alternate Jurors.* The court may direct that not more than **[**~~six~~**] four** jurors in addition to the regular jury be called and impanelled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retires to consider its verdict, become or are found to be unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities, and privileges as the regular jurors. An alternate juror who does not replace a regular juror shall be discharged after the jury retires to consider its verdict. Each side is entitled to one peremptory challenge in addition to those otherwise allowed by law if one or two alternate jurors are to be impanelled, two peremptory callenges if three of four alternate jurors are to be impanelled, and three peremptory challenges if five or six alternate jurors are to be impanelled. The additional peremptory challenges may be used against an alternate juror only, and the other peremptory challenges allowed by law shall not be used against an alternate juror.

(As amended, July 21, 1986, eff. Oct. 1, 1986.)

Amendments to Rule 48

Rule 48 is amended as follows:

Rule 48. **[**~~Juries of Less Than Twelve~~**]** **Stipulation as to Juries**—Majority Verdict

The parties may stipulate that the jury shall consist of any number less than **[**~~twelve~~**] the number of jurors otherwise required under Rule 47(a),** or that a verdict or a finding of a stated majority of the jurors shall be taken as the verdict or finding of the jury.

(As amended, July 21, 1986, eff. Oct. 1, 1986.)

Amendments to Rule 60

Rule 60 is amended as follows:

Rule 60. Relief From Judgment or Order

(a) *Clerical Mistakes.* * * *

(b) *Mistakes, Inadvertence, Excusable Neglect—Newly Discovered Evidence—Fraud, Etc.* On motion of a party or upon its own initiative and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial or rehearing under Rule 50(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. **[~~A motion of a party shall be served and filed not later than 30 days after the judgment, order, or proceeding was entered or taken. The court, upon its own initiative, may also grant relief from a judgment or order as prescribed by this rule not later than 30 days after the date of entry of the judgment or order.~~]** **The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation.**

This rule does not limit the power of the court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in 28 U.S.C. § 1655, or to set aside a judgment for fraud upon the court. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

(As amended, eff. Jan. 1, 1985; **July 21, 1986, eff. Oct. 1, 1986.**)

Amendments to Rule 62

Rule 62 is amended as follows:

Rule 62. Stay of Proceedings To Enforce a Judgment

(a) *Automatic Stay—Exceptions—Injunctions.* Except as stated herein **or as otherwise ordered by the court**, no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 30 days after its entry. Unless otherwise ordered by the court, an interlocutory or final judgment in an action for an injunction shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of

an appeal. The provisions of subdivision (c) of this rule govern the suspending, modifying, restoring, or granting of an injunction during the pendency of an appeal.

(b) *Stay on Motion for New Trial or Rehearing, or for Judgment.* * * *

(c) *Injunction Pending Appeal.* * * *

(d) *Stay Upon Appeal.* * * *

(e) *Stay in Favor of the United States or Agency Thereof.* * * *

(f) *Stay According to State Law.* * * *

(g) *Stay of Judgment as to Multiple Claims or Multiple Parties.* * * *

PRACTICE COMMENT: **The court-ordered exception to the 30-day automatic stay under subdivision (a) is intended to permit timely enforcement of judgments in cases involving perishable merchandise, or where time is otherwise shown to be of the essence.**

(As amended, eff. Jan. 1, 1985; **July 21, 1986, eff. Oct. 1, 1986.**)

Amendments to Rule 67

Rule 67 is amended as follows:

Rule 67. Deposit in Court

In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money or the disposition of any other thing capable of delivery, a party, upon notice to every other party, and by leave of court, may deposit with the court all or any part of such sum or thing, whether or not that party claims all or any part of the sum or thing. The party making the deposit shall serve the order permitting deposit on the clerk of the court. Money paid into court under this rule shall be deposited and withdrawn in accordance with the provisions of 28 U.S.C. § § 2041, **[**~~and~~**]** 2042 **and 2043**; **[**~~the Act of June 26, 1934, c. 756, § 23, as amended (48 Stat. 1236, 58 Stat. 845), 31 U.S.C. § 725v;~~**]** or any other like statute. The fund shall be deposited in an interest-bearing account or invested in an interest-bearing instrument approved by the court.

(As amended, eff. Jan. 1, 1985; **July 21, 1986, eff. Oct. 1, 1986.**)

Amendments to Rule 75

Rule 75 is amended as follows:

Rule 75. Practice—Appearance—Substitution of Attorneys—Withdrawal of Attorney—**Notification of Changes**

(a) *Practice.* Only an attorney admitted to the bar of the court may practice before the court **[**~~*~~**]**, **except that an individual may represent himself in an action.** An attorney who is employed or retained by the United States, or an agency or officer thereof, may

[~~*An individual may represent himself in an action commenced on his own behalf.~~]

enter an appearance, file pleadings, and practice in this court in cases in which the United States or the agency is a party.

(b) *Appearances.*

(1) **Except where an individual represents himself in an action, [~~There~~] there** shall be an attorney of record for a party.**[*]** If a summons, pleading or other paper provided for in these rules bears the name, address and telephone number of a member of the bar of this court, he shall be recognized as the attorney of record and no separate notice of appearance shall be required of him. Provided, however, that an attorney representing the United States, or an agency of officer thereof, who is not otherwise admitted to practice before the court, shall serve a separate notice of appearance as prescribed by paragraph (2) of this subdivision (b).

(2) * * *

(c) *Substitution of Attorneys.* * * *

(d) *Withdrawal of Attorney.* * * *

(e) *Notification of Changes.* * * *

PRACTICE COMMENT: * * *

(As amended, July 21, 1986, eff. Oct. 1, 1986.)

Rule 77.1

Rule 77.1 reads as follows:

Rule 77.1. Judicial Conference

(a) *Purpose.* The chief judge is authorized to summon annually the judges of the court to a judicial conference, at a time and place the chief judge designates, for the purpose of considering the business of the court and improvements in the administration of justice in the court. The chief judge shall preside at the conference.

(b) *Composition.* All members of the bar of this court may be members of the conference and participate in its discussions and deliberations.

(c) *Registration Fee.* A registration fee shall be paid by attendees of the conference, and shall be applied to the payment of the expenses of the conference, as approved by the chief judge.

(As added, July 21, 1986, eff. Oct. 1, 1986.)

Amendments to Rule 89

Rule 89 is amended as follows:

Rule 89. Effective Date

(a) *Effective Date of Original Rules.* * * *

(b) *Effective Date of Amendments.* * * *

(c) *Effective Date of Amendment.* * * *

(d) *Effective Date of Amendments.* * * *

(1) * * *

(2) * * *

(e) *Effective Date of Amendments.* * * *

(f) *Effective Date of Amendments.* The amendments adopted by the court on July 21, 1986, shall take effect on October 1, 1986. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent in the opinion of the court their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(As added, eff. Jan. 1, 1985; as amended June 19, 1985, eff. Oct. 1, 1985; **July 21, 1986, eff. Oct. 1, 1986.**)

Amendments to Appendix of Forms

The Specific Instructions in the Appendix of Forms are amended as follows:

Specific Instructions

Form 1 * * *
Form 2 * * *
Form 3 * * *

This form of summons is to be used only in those actions described in 28 U.S.C. § 1581(c). It is to be used both: (1) when the action is commenced by filing a summons only (i.e., to contest a determination listed in section 516A(a)(2) **or (3)** of the Tariff Act of 1930); and (2) when the action is commenced by filing concurrently a summons and a complaint (i.e., to contest a determination listed in section 516A(a)(1) of the Tariff Act of 1930).

The summons must be filed together with a $50 filing fee, **[~~and~~]** a completed Information Statement (Form 5) **and a completed Disclosure of Corporate Affiliations and Financial Interest (Form 13).**

When the clerk of the court is required to make service of the summons (i.e., those actions commenced by filing a summons only), the original and one copy of the summons must be filed with an additional copy for each defendant to be served; and the back of the summons must list the complete name and mailing address of each defendant to be served.

When the plaintiff is required to make service of the summons (i.e., those actions commenced by filing concurrently a summons and a complaint), the original and one copy of the summons must be filed with proof of service. Before making service of the summons, plaintiff must obtain a court number from the office of the clerk and endorse the number on the summons. For this purpose, a court number may be assigned to the action and obtained by telephone request.

Form 4 * * *
Form 5 * * *

Form 6 * * *
Form 7 * * *
Form 8 * * *
Form 9 * * *

(As amended, July 21, 1986, eff. Oct. 1, 1986.)

Amendments to Form 3

Form 3 is amended as follows: FORM 3

UNITED STATES COURT OF INTERNATIONAL TRADE, PLAINTIFF *v.* UNITED STATES, DEFENDANT

SUMMONS

To: The Attorney General, the Department of Commerce, and/or the United States International Trade Commission:

PLEASE TAKE NOTICE that a civil action has been commenced pursuant to 28 U.S.C. § 1581(c) to contest the determination described below.

L.S. _____
Clerk of the Court

1. _____
(Name and standing of plaintiff)

2. _____
(Brief description of contested determination)

3. _____
(Date of determination)

4. _____
(If applicable, date of publication in Federal Register of notice of contested determination)

_____ _____
Signature of Plaintiff's Attorney Name, Address and Telephone Number of Plaintiff's Attorney

_____
Date

SEE REVERSE SIDE

United States Court of International Trade

SERVICE OF SUMMONS BY THE CLERK

If this action, described in 28 U.S.C. § 1581(c), is commenced to contest a determination listed in section 516A(a)(2) **or (3)** of the Tariff Act of 1930, the action is commenced by filing a summons only, and the clerk of the court is required to make service of the summons. For that purpose, list below the complete name and mailing address of each defendant to be served.

(As amended, July 21, 1986, eff. Oct. 1, 1986.)

ANNOUNCEMENT

Chief Judge Edward D. Re has announced the call of the Third Annual Judicial Conference of the United States Court of International Trade. The Conference is scheduled for Friday, October 24, 1986, at The Ballroom at Windows on the World, 106th Floor, One World Trade Center, New York, New York and will commence at 9:00 a.m.

The Conference will be composed of the Judges of the United States Court of International Trade, officials from the International Trade Commission, the Customs Service, the Departments of Justice, Commerce, and Treasury, members of the Bar of the Court, and other distinguished guests. The theme of the Conference is "Judicial Oversight — Relations Between the Court and the Agencies."

Sir Roy Denman, Head of the Delegation, Delegation of the Commission of the European Communities, is the Conference Luncheon Speaker.

Senator Dennis DeConcini, United States Senator from Arizona, and co-sponsor of the Customs Courts Act of 1980, will receive the Court's Annual Award for his outstanding contributions to the administration of justice in international law.

Last year, the Second Annual Judicial Conference was attended by over 400 conferees from 16 states, the District of Columbia, Puerto Rico, and Japan.

Lawyers and other interested persons are invited to attend. Since capacity is limited, early return of your registration form is suggested. To facilitate final arrangements, it would be appreciated if your registration form is received on or before Wednesday, October 1, 1986.

For further information, please write to:

USCIT Judicial Conference
c/o Office of the Clerk
United States Court of International Trade
One Federal Plaza
New York, New York 10007

JOSEPH E. LOMBARDI,
Clerk of Court.

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